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Supreme Court of the United States.

OCTOBER TERM, 1896.

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No. 415.

THE NEW YORK INDIANS, APPELLANTS,

vs.

THE UNITED STATES.

ADDITIONAL BRIEF FOR THE APPELLANTS.

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In view of the protracted argument presented in the brief for the United States and the stress therein laid upon the questions of consideration and abandonment, it is deemed advisable to submit the following additional brief for the appellants.

For the Court's convenience the principal treaties referred to and the findings of the Court of Claims on the first hearing of the case are printed in an appendix.

I.

On January 21, 1884, the Senate Committee on Indian Affairs made an order under "the Bowman act," so called, of March 3, 1883, referring the claim of the appellants to the Court of Claims for the investigation and determination by that court of the facts involved in the case. That court reported to the Senate its findings, of date January 11, 1892, which findings are printed in the Appendix (pp. 39–49). The Senate Committee on Indian Affairs, on these findings, recommended the passage of the act, which is printed on page 4 of the Record. This act conferred upon the Court of Claims jurisdiction to entertain the claim of the appellants and enter judgment thereon.

The appellants, claimants below, are designated by the name of The New York Indians and are found by the Court of Claims to comprise the following nations or tribes, namely: The Senecas, Onondagas, Cayugas, Tuscaroras, Oneidas, St. Regis, Stockbridges, Munsees, and Brothertowns. (Rec., p. 7.)

The rights of the appellants turn upon the provisions of the treaty of Buffalo Creek of January 15, 1838. On that date the New York Indians had an Indian title to 500,000 acres of land in the State of Wisconsin, upon which at that time a part of them resided. This land was secured to the Indians by the treaties of 1831 and 1832, to be found in the Appendix, on pages 1 to 17. The important provision of the treaty of Buffalo Creek was in fact for an exchange of lands, the New York Indians releasing and surrendering the Wisconsin lands and the United States conveying to the Indians a tract of land in the then Indian Territory, described by metes and bounds and containing 1,824,000 acres of land, being at the rate of 320 acres for each of the Indians as their numbers were then computed. In addition, the treaty contained a stipulation for the removal of the

Indians to their new lands. On the proclamation of the treaty, made April 4, 1840, the United States surveyed and made part of the public domain the Wisconsin lands and afterwards disposed of the same. In March, 1859, by order of the Secretary of the Interior, the new lands were surveyed and made part of the public domain and sold by the United States at the net price of $1.22 per acre, but the evidence before the Court of Claims tended to show that the lands were of greater value at the time they were made part of the public domain.

Furthermore, by the treaty of Buffalo Creek the United States agreed to appropriate the sum of $400,000, to be applied to aid the Indians in removing to their new lands and supporting themselves the first year after their removal, etc. The numbers of the New York Indians at the time of the treaty were fixed by the treaty at 5,485. The United States in fact appropriated only the sum of $20,477.50 to aid in the removal of the Indians, and actually expended for that purpose only $9,797.11 of that amount. The claim of the appellants is founded upon the non-performance by the United States of its stipulations in the premises and making the new lands a part of the public domain and disposing of the same.

The issues of fact presented by the pleadings are made by the petition and the pleas of the United States. These issues are limited by the pleadings to the truth of the allegations set forth in the petition, for the United States interposed a general denial only, and did not plead any special matter in controversion or avoidance of the claims set up in the petition.

The jurisdictional act in the case conferred upon the Court of Claims special jurisdiction to hear and enter up judgment upon the claim of the appellants, at the same time authorizing the court to adjudicate the case upon the findings of fact previously found and reported to the Senate,

as above stated, or to take other evidence as to the facts. That court, however, treated the case *de novo*, and its findings as contained in the record differ materially from the original findings. It is contended by the appellants that in this the court departed from the purpose of the jurisdictional act, and that its judgment should have been rendered upon the original findings and such additional facts not contradictory to those findings as might be established; but, however that may be, it is clear that the United States must be confined to the issues made by the pleadings, and cannot be heard to allege that some one or all of the several tribes of Indians either abandoned the treaty or had accepted a sum of money in relinquishment of any claim growing thereout.

So far from appearing captious, this point is of the first importance; for the United States now rely on an assumed forfeiture and abandonment by the Indians, neither of which defenses is made by the pleadings and neither of which can prevail unless the same be made clear affirmatively by the United States. The claimants earnestly contend that this view cannot be disregarded, because the evidence on which the Court of Claims based its findings is not returned, and this Court must of necessity be guided by the pleadings and findings alone. Under the jurisdictional act the Court of Claims was bound by the general rules of law regulating its practice, except so far as they are modified by the act to meet the features of this special case, and no such modification is to be found in the act except as to the question of limitations, which by the terms of the act is eliminated.

See Vigo's case, 21 Wall., 546.

II.

The first question which presents itself is, What interests and rights were acquired by the New York Indians to the Wisconsin lands? And to answer this question we must first

consider the title of the Menomonees and Winnebagoes to those lands.

At the conclusion of the Revolution the Indians were in admitted occupation and right of possession and perpetual enjoyment of the soil occupied by them, subject only to the pre-emptive right of the Sovereign. The Menomonees and Winnebagoes at that time were in occupation of a large tract of country bordering Lakes Superior and Michigan. The British Crown acknowledged the rights of the Menomonees and Winnebagoes in these lands, but secured by treaty from them the right of pre-emption. The same sovereignty dealt with these Indians in relation to their lands as though they were owners thereof, but never coerced a surrender of them. In succeeding to the rights of the British Crown in respect of the Indians the United States took the same position and adopted the same policy (3 Kent Com., 466). The Constitution of the United States, by declaring treaties made and to be made the supreme law of the land, adopted and sanctioned the previous treaties with the Indian nations, and of necessity admitted their rank among those powers capable of making treaties, as well as their rights as then established and understood (6 Peters, 515; 2 Stats., 146). These rights involved a right of possession by the Indians perpetual in the tribes and such as could never be taken from them without their consent and by treaty (Mitchel *vs.* U. S., 9 Pet., 711). Accordingly, by a universal rule, every purchase of lands by the Indians and every assurance to them made by treaty was held to give a good title, and the Indians' rights of both possession and alienation of lands secured to them were amply protected and guaranteed by the Sovereign. (*Ibid.*; 2 Stats., 146, 147, and notes; Clark *vs.* Smith, 13 Pet., 195; 5 Pet., 1.)

The relations of the Menomonee and Winnebago tribes and the Six Nations of New York Indians among themselves and to the British Crown were transferred to the United States by the treaty of November 19, 1794 (2 Stats.,

146, and notes). On January 3, 1816, the United States made a treaty with the Winnebagoes by which the rights of the latter were fully recognized and protected (7 Stats., 144). Similarly, by treaty of March 30, 1817 (7 Stats., 153), the rights of the Menomonees were recognized and protected; and since these treaties those two tribes have been treated as distinct political communities, holding their lands by a right to be extinguished only in return for good and sufficient consideration. (See 1 Stats., 307, 309, 323, 377, 379, 384, 424; 20 Johns., 896; 51 Barb., 590; 6 Pet., 515; 8 Wheat., 540.) Stated least favorably to the Indians, the unquestioned law has always been, as recognized by this Court, as follows:

"The Indians are admitted to be the rightful occupants of the soil, with a legal as well as a just claim to retain possession of it and to use it according to their own discretion, though not to dispose of the soil at their own will except to the Government claiming the right of pre-emption. Whatever that right or title, the Indians had an unquestioned right to the lands they occupied until that right should be extinguished by a voluntary cession to the Government." (5 Pet., 1; 3 Kent, 461.)

Such undoubtedly was the title of the Menomonee and Winnebago tribes to the Wisconsin lands when they ceded them to the appellants.

We pass on to consider the title of the appellants to their lands in New York.

By treaty of October 22, 1784 (7 Stats., 715), the United States received the Six Nations of New York Indians into their protection and guaranteed them that they should be secured in the possession of their lands. The engagements with the Indians in the premises were renewed January 9, 1789 (7 Stats., 33), and again by treaty of November 11, 1794 (7 Stats., 45), the United States acknowledging the lands reserved to the New York Indians in their respective

treaties with the State of New York to be their property and agreeing never to claim the same or disturb them or any of the Six Nations or their Indian friends residing on the lands and united with them in the free use and enjoyment thereof.

The treaty of Buffalo Creek transferred to the United States no claim or interest whatever in the New York lands.

In 1810 the Six Nations of New York Indians inquired of the President of the United States whether the Government would consent to their moving into the neighborhood of their Western brethren, and whether the Government would acknowledge their title to any lands which they might there procure by gift or purchase, and whether then existing treaties would in such case remain in full force and their annuities be paid as theretofore (7 Stats., 550; finding 2, Rec., p. 7; Sen. Doc. 189, 27 Cong., 2d sess., pp. 7, 8). All the requests of the Indians in the premises were granted (Sen. Doc. 189, *supra*, p. 10).

This makes it plain that the Court of Claims was in error in saying that the main important object of the United States was to move the Indians West, and that the endeavor to accomplish this object led, first, to the grant of the Wisconsin lands. In point of fact, as is abundantly manifest, the Wisconsin lands were secured to the Menomonees and Winnebagoes and the New York Indians respectively, as above shown, long before the treaty of Buffalo Creek, and the idea of removal West originated with the New York Indians themselves. Action of the Government in respect of removing the Indians West did not take form as a policy until long afterwards (2 Stats., 142). The Court of Claims did not find, nor is it true, that the United States made a grant of lands in Wisconsin to the New York Indians at any time. The Wisconsin lands were purchased and paid for by the claimants with moneys and goods received by them on the sale of certain of their lands to the State of New York, and they paid out large sums for ex-

ploring expeditions for the lands purchased by them and the removal of their people thereto (Sen. Doc., *supra*, p. 5); and so far from the Government's seizing an opportunity to pursue its policy of removing the Indians West, as is the opinion of the Court of Claims (Rec., pp. 26, 29), the fact is that in 1810 the claimants petitioned the President for permission to remove; that before the treaty of Buffalo Creek they petitioned the President to take their Wisconsin lands and permit them to remove to the Indian Territory (7 Stats., 550), and that prior to November 24, 1845, they made application to the Government to be removed again and again, but the Government "did not deem it expedient to enter into any arrangement for that purpose." (Finding 12, Rec., p. 19.)

It is, therefore, plain that there was at the time no avowed *bona fide* policy of the Government on the subject, and that the United States did not attempt to remove the claimants from their New York lands, which would have been in violation of the guarantee to defend them in their possession and never to disturb them in the free use and enjoyment of their lands. In truth, the memorial of 1810 had for its object not the removal of the Indians from New York, but only provision for the coming generations, for the numbers of the Indians in New York were increasing, so that it was foreseen that their old homes would soon be inadequate to support the increased population, and the inquiry of the President was distinctively whether the title of the Indians to their new lands would be acknowledged and their annuities continued. The Wisconsin lands were bought by the New York Indians in 1821 and 1822, before the Indians were put under any obligation to remove to them either as tribes or as individuals, and nothing could be further from the truth than the statement in the opinion of the court below that "the United States gave the New York Indians land in Wisconsin for emigration."

Notwithstanding the contentions of counsel for the United

States and the opinion of the Court of Claims, it may surely be said, with all respect, that further argument is unnecessary in support of the proposition that the Menomonees and Winnebagoes had title to the Wisconsin lands amply sufficient to furnish consideration for any bargain in relation to those lands; that the New York Indians were similarly entitled to their lands; that the United States gave nothing to the New York Indians except their approval of a bargain, and the New York Indians by assenting to the Menomonee treaty of 1831 enabled the United States to become possessed of 2,500,000 acres of land in Wisconsin, but otherwise had no dealings with the United States in relation to the Western lands antedating the treaty of Buffalo Creek; and that the so-called policy of the Government to remove the Indians West cut no figure whatever as a consideration for the assent by the United States to the purchase by the New York Indians of the Wisconsin lands. The United States had not even the right of pre-emption in the New York lands, and the claimants had actually purchased of the Menomonees and Winnebagoes and paid for at least a joint interest in 5,500,000 acres of land with the Government's approval. The dealings between the Menomonees and the Winnebagoes, on the one part, and the United States, on the other, after the cessions to the New York Indians of 1821 and 1822, culminated in the Menomonee treaties of February 8, 1831, and October 27, 1832, which are greatly enlightened by the Senate document above mentioned, the whole of which is of great interest and importance in the consideration of this case, but which is too voluminous to be printed here. These treaties of 1831 and 1832 (App., pp. 1, 12) show clearly that out of the 5,500,000 acres in Wisconsin in which the New York Indians might justly have claimed at least a full half interest they received only 500,000, and that of the remaining 5,000,000 acres the Menomonees ceded and the United States received one-half. So far as the New York Indians were concerned, this was sheer spoliation, for the

sums agreed by the treaties to be paid by the United States on behalf of the New York Indians were not only insignificant in the extreme, but also were paid to the Menomonees for what was in fact already the property of the New York Indians; but the New York Indians having in 1832 assented to the dealings of the Menomonees with the United States, their title to the 500,000 acres of Wisconsin lands became assured, and, as found by the Court of Claims (Rec., p. 28), was fully recognized by the Government, and the court most properly found that the rights of the New York Indians in those lands were so substantial as to furnish a sufficient consideration for the agreement expressed by the treaty of Buffalo Creek, which agreement the court sustained "as a valid agreement, having all the necessary elements of a binding contract." (Rec., p. 32.)

It follows unavoidably that the claimants having a good and sufficient title to the Wisconsin lands which they gave up to the United States, they acquired a full and sufficient title to the Kansas lands of the nature and character intended to be secured to them by the treaty of Buffalo Creek. By the granting clauses of that treaty the intention of the parties was fully and effectually secured, as the same is recited in the preamble to the treaty and also clearly manifested by the terms of the grant. Not to repeat the provisions of the treaty *in extenso*, it is clear beyond peradventure that the effect of those provisions was to give the United States the Wisconsin lands in exchange for the Kansas lands.

It is manifest, also, that it was the intention of the treaty to secure to the New York Indians an estate in the Kansas lands of the same nature and duration conceded on all hands to have been vested in the several Indian tribes at the time of the formation of the Government. Again, the title and estate intended to be conveyed to the New York Indians is clearly defined in the granting clauses of the treaty by the use of the words "to have and to hold the

same in fee-simple to the tribes and nations of Indians by patent from the President of the United States, issued in conformity with the provisions of the third section of the act" approved May 23, 1830. One of the provisions of that act is "that in making any such exchange it shall and may be lawful for the President solemnly to assure the tribes and nations with whom the exchange is made that the United States will forever secure and guarantee to them and their heirs or successors the country so exchanged with them, and, if they prefer it, the United States shall cause a patent grant to be made and executed to them for the same, provided always that such lands shall revert to the United States if the Indians become extinct or abandon the same." (4 Stats., 411). Plainly, this gave the Indians a base or determinable fee, and, as this Court has specifically held, an exchange or purchase of lands made by treaty under such conditions gave a good title to the Indians on ratification of the treaty without the formality of patent from the United States. (Mitchel *vs.* U. S., 9 Pet., 711.)

Again, in order to carry out the object and purpose of the treaty it was necessary to vest in the Indians an estate of the nature and character mentioned, for it is declared in the treaty that the lands were to be set apart as a permanent home for the Indians who desired to remove, and the United States promised and agreed to protect them in the peaceable possession of the lands and secure to them the right to establish their own form of government, appoint their own officers, and administer their own laws. This effected a title to the Indians *in presenti*, just as such title was secured to the Indians in the Wisconsin lands. The patents contemplated would be only by way of additional muniments of title and not essentials thereto. (1 Washburn, Real Estate, chap. 3, p. 57, articles 1 and 2.)

Beyond all controversy, the promises and stipulations of the treaty of Buffalo Creek to be performed by the United

States amounted in legal effect to a bargain and sale to the Indians of the Kansas lands and secured to them the right of possession and use of the same by a title equivalent, for all practical purposes, to a fee-simple. The treaty operating an exchange of lands and the United States having procured the lands intended for them, it is unavoidable that the Indians were entitled and intended to be put in as good a position in relation to the lands to come to them. The grant to the Indians, although of a legislative or treaty character only, was as effective as though made by deed of the most technical character. (1 Washburn, 72; Rutherford *vs.* Green's Heirs, 2 Wheat., 196; Fremont's Case, 17 Howard, 599; 9 Ops. Att'ys Gen., 253. See also 3 Washburn, 330, 331; Hunt *vs.* Johnson, 44 N. Y., 27.)

It is to be further noted in this connection that the provisions of the treaty of Buffalo Creek in relation to the Senecas and Tuscaroras unmistakably indicate that the Indians should take a present and immediate interest in the Kansas lands. By the tenth article of the treaty the Senecas sold and conveyed their rights in the New York lands to Ogden and Fellows, who had secured the pre-emptive right of purchase thereof, and the additional treaty of 1842 (Appendix, p. 33), merely secured to the Senecas the right to remain on their New York reservations until they should surrender them to Ogden and Fellows in accordance with the treaty provisions. It is submitted that counsel for the United States wholly misapprehend the meaning and effect of the treaty of 1842, which does not involve any release by the Senecas of their interest in the Kansas lands or of any of their rights under the main treaty, but only makes a provisional arrangement between the Senecas, on the one part, and Ogden and Fellows, on the other, in amendment of the original agreement between those parties as contained in the main treaty. So plain is this to counsel for the claimants that it seems to them unnecessary to do more than to

ask a reading by the Court of the two treaties together. The same remarks apply to the case of the Tuscaroras, and this branch of the case may be dismissed with the remark that, without giving to the treaties the construction contended for by counsel for the claimants, the Senecas and Tuscaroras were without one acre to which they had title or which they could rightfully remove to and occupy.

It would seem unnecessary to revert to the question of consideration, but so much is said on that subject by counsel for the United States and the court below that it may not be amiss to add a few words on the subject.

As already pointed out, the court in its opinion (Rec., p. 32), distinctly holds that the New York Indians had a valuable interest in their New York lands, sufficient to furnish consideration for a contract, and that similarly they had a valuable interest in the lands in Wisconsin. The court truly says, "The amount and sufficiency of the consideration it is no part of our duty to consider. We should not and we cannot decide whether the bargain was more advantageous to the plaintiffs or to the defendants." There was manifestly no escape from this position. It is surely too late to argue to this Court that parties to a treaty are bound by the recitals therein, and the recitals in the treaty of Buffalo Creek would seem to put the question of consideration beyond all doubt. Outside of its recitals, it is indisputable, as matter of fact, that the Wisconsin lands which the claimants gave up were taken by the United States and parted with for what seemed to the United States sufficient value. Surely this must close all discussion of the subject, and leave for consideration only the question propounded by the court below in its opinion, namely, "whether any rights secured by the treaty have been violated."

If it be deemed necessary to sustain the proposition that the Indians and the United States alike are bound by the recitals in the several treaties and their preambles involved

in the case, reference may be had to the following authorities:

Torry *vs.* Bank of N. O., 9 Paige, 659, and cases cited.
Carver *vs.* Jackson, 4 Pet., 83–'8.
Doe *vs.* Wilson, 23 How., 457.
Bell *vs.* Brewer, 1 How., 184.
U. S. *vs.* Rening, 18 How., 343.
U. S. *vs.* Peralta, 19 How., 343.
Choctaw Nation *vs.* U. S., 119 U. S., p. 28.
Little *vs.* Watson, 32 Me., 224.

The peculiarly forcible application of this principle to cases of treaties with Indians and the liberal construction in favor of the Indians to be given thereto is adverted to in the main brief and need not be here repeated. (See the main brief, pp. 23 and 24.)

In leaving this branch of the case one fact dwelt upon by the court below may be thought to deserve passing notice. The court seems to have considered as of importance the fact that the United States did not by the treaty of 1838 acquire from the claimants any of their New York lands. This is true and as unimportant as true. The case in its simplicity is this: The relations of the Indians to the Sovereign were substantially settled at the time of the American Revolution. The rights of the Indians to any lands in the United States were determined by those relations as recognized by the Sovereign. On the achievement of independence the United States took the place of the British Crown as Sovereign over the Indians. The claimants owned certain interests in New York lands and some of their Western brethren owned certain interests in Wisconsin lands. Moving wholly within proper limits, the claimants and their Western brethren came to an agreement whereby the former acquired certain of the Wisconsin lands. The

United States, as Sovereign, came into the case and gave the Sovereign's approval to the transaction as expressed in the earlier treaties, so that at the time of the treaty of Buffalo Creek the claimants were recognized as having sufficient title to 500,000 acres of the Wisconsin lands to furnish consideration for a contract with the Sovereign. This interest the Sovereign wanted, and in consideration of receiving it agreed to give the claimants the Kansas lands. The New York lands therefore played no part in the transaction so far as the United States were concerned, and the only relation which the United States had to those lands was that inasmuch as the Indians were the Nation's wards they could not contract with a third party without the approval and consent of their guardian. To this extent only have the United States any interest as to what became of the claimants' New York lands, and the United States assented to the dealings of the claimants in relation thereto without asking or expecting to get any part of those lands. Plainly, therefore, the question whether the United States got any part of or interest in the New York lands is of no importance in the premises.

III.

We come now to consider the question upon its view of which the court below most relied in dismissing the petition of the claimants. Said that court:

"The Buffalo Creek treaty has vanished, leaving no rights or duties behind it in so far as this litigation is concerned." (Rec., p. 41.)

At the risk of tediousness this position must be examined at length, although it is deemed that what is said in the main brief on the point is unanswerable.

In the outset, it may be assumed that a treaty is the supreme law of the land, and that it is in its nature a contract,

which can no more be violated without liability than can any other contract. It may be further assumed that the only party having a right to disclaim a contract, where there has been a breach, is the party injured by the breach. As in any other case of contract, the party injured may waive the breach and proclaim a rescission, or he may assert the contract and demand satisfaction for the breach.

Again, it may be assumed as unnecessary to argue that where one of the parties to a contract has received all the benefits contemplated to be received by him under the contract his mouth is closed to assert non-performance of his own obligations as establishing a rescission or abandonment of the contract. The court below found that the claimants did all that was required of them under the treaty, and that the United States got the whole consideration moving it to enter into the treaty. It would seem that this ought to be the end of the argument; but the further fact is established by the findings that, although by the terms of the treaty and the decisions of this Court it was incumbent upon the United States to initiate and carry out the provisions of the treaty in relation to the removal of the Indians, the President did not take the first step looking to such removal, namely, the prescribing of a time therefor. Congress never made the necessary appropriations in the premises, and the Secretary of the Interior threw the Kansas lands open to settlement, and they were disposed of by the United States, which received all the proceeds thereof. To avoid what would seem the inevitable liability of the United States in the premises, the court below holds that the claimants in effect abandoned the treaty and consented to forego all claim upon the United States resting thereon.

As is above pointed out, the Government is in no position under the pleadings to set up such a defense; and, moreever, it is in no position to do so, in view of the unquestioned fact that it received and disposed of the whole consideration moving to it, and is in no position to restore to the claim-

ants their *status quo*. Furthermore, as will be more particularly dwelt upon hereafter, the claimants or some of them, in the beginning of the manifestation by the Government of its purpose to disregard its obligations under the treaty, vigorously protested against such action, and have since steadily kept their protest good.

It may be assumed as not open to question that by throwing the Kansas lands into the public domain and disposing of them the Government disabled itself to keep its agreement with the claimants after such act. So far, therefore, as the question of abandonment is concerned, it is really necessary only to consider the conduct of the parties down to the time of that act, namely, the year 1859 or 1860; but there is in the conduct of both parties since the latter year much that throws a strong light on the question.

It is to be observed preliminarily that so far as the question of transfer of titles is concerned the treaty of Buffalo Creek was an executed as distinguished from an executory contract. The court below properly held the treaty to be one for an exchange of lands, and the language of the treaty, as above pointed out, unquestionably operates grants to the respective parties *in presenti*. It would seem to follow of necessity that either each of the parties should have what was stipulated for or that neither should have anything.

The court below in effect held that while the Government got what it bargained for the claimants by their course of conduct have yielded and abandoned their right to what they bargained for. In other words, the position of the court is that the Indians agreed to give and did give the United States certain lands, and the United States agreed to give and did not give the Indians certain other lands, but that the Indians have no right now to ask compensation, because their conduct shows that they abandoned their rights and have foregone any claim to receive what they bargained for.

It would seem a complete answer to this position to say that there was no consideration, real or pretended, for the abandonment by the Indians of their claims. The court's implied reply to this is and can only be that what the Indians now claim was to be given them only upon condition of their removal West, and that their conduct shows that they did not want to go West. In turn, this is directly in face of the court's own finding and holding, following this Court, that the Indians were not called upon to go West until the President should prescribe the time for their going and the Government should make provision therefor, which it is not only conceded but also affirmatively found was never done. It is not intended to repeat here what is said in the main brief as to the duty of the President and Congress in that behalf. What is directly to the point is that, according to the view of the court below, while the Indians were not under obligation to go until a time was prescribed and provision made for their going, it was yet possible in law for them to lose their rights by not doing that which they were given no opportunity to do.

It is also conceded by the opinion of the court below that whatever alleged abandonment or relinquishment there was by the Indians in the premises grew out of their assumed conduct and did not rest upon any positive action. It is held by the court that there was no refusal by the Indians to emigrate. "We do not find that such a refusal was affirmatively made" (Rec., p. 35); and again (*ibid.*): "The Government could have enforced the removal, but it not only took no steps to that end, but failed to provide the means required of it by the treaty to pay for the removal. It has been quiescent;" and still again (*ibid.*): "The subject-matter of removal was left to the discretion of the President, and this discretion was not limited to a period of five years nor to any other period;" and still again (Rec., p. 42): "The United States did not wish to force an emigration, and both parties

remained quiescent until the Government decided to appropriate the Kansas land and to sell it to white settlers. When this had been done, the defendants, by their own act, became unable to fulfill any financial obligation imposed upon them by the treaty of Buffalo Creek."

In view of all this it is inconceivable how the court could have held that the treaty of Buffalo Creek is eliminated from the discussion. (*Ibid.*)

IV.

We pass to consider the conduct of the parties as shedding light upon this holding of the court below, namely, that the treaty was eliminated or vanished or was abandoned.

In considering this question we are embarrassed by the somewhat inconsistent opinion of the court, which seems to hold not so much that the treaty itself was abandoned as that there was an abandonment by the claimants of the idea of emigration, evidenced by what the court calls their quiescent attitude. If it be contended that the treaty was abandoned there is one answer; but if it be contended that the Indians, after having secured the privilege of removal at the expense of the Government gave up that privilege, there is quite a different answer.

The counsel for the Government in their brief would seem to treat all that is promised to the claimants by the treaty as matter of grace, and in this connection lay much stress on the question of consideration. As to this it would seem too plain for argument that the question of consideration is not open, for, among others, the reasons already given as to the force and effect of treaty recitals. Nevertheless, counsel for Government again raise this question, and attempt to maintain in substance that as the United States paid for the Wisconsin lands for the benefit of the Indians there can be no claim of consideration set up by the latter.

If there be any force in what was said by this Court in the case of *The Old Settlers*, 148 U. S., 466–7, it is certain that the treaty of Buffalo Creek concludes this question. By the treaty the Government indubitably recognized the Indians as having an interest in the Wisconsin lands of sufficient value to form a consideration for the grant of the Kansas lands. But if it be permissible for the Government to go back of the treaty of Buffalo Creek to the Menomonee treaty of 1832, to help out its defense, it is undoubtedly equally permissible for the claimants to go back of the latter treaty in order to bring attention to the whole history of the case. It is felt to be a work of supererogation to do this, but at the expense of criticism on that score the facts may be briefly recited.

Prior to 1827 the claimants had purchased with their own funds, from the Menomonees, the Indian title to over 5,500,000 acres of land in Wisconsin, to be held in common with the vendors. The purchase of a considerable portion of this tract was expressly approved by the President, and the claimants were officially notified that the President considered their title to every part of the tract as equally valid as against the vendors (findings 2 and 3, Rec., p. 79); and this was accompanied by distinct notice that by this official sanction the President did not mean to interfere with nor in any manner invalidate their title to all lands acquired in Wisconsin, including those not confirmed by Government. Subsequently, by the treaties of 1827 and 1831, between the United States and the Menomonees, the United States secured and took possession of over two millions and a half acres of the Winconsin lands (finding 4, Rec., p. 9), and paid the Menomonees therefor, but did not pay anything to the claimants. On the contrary, the United States induced the claimants to relinquish their rights to all of the said tract except 500,000 acres, and even as to that imposed the condition that the claimants should forfeit all rights to these

lands on failure to remove to the same within such time as the President should prescribe. It is to be observed that the claimants, not being parties to the treaty, are not bound by the recital in the treaty of 1831 that the Menomonees protested that they had not sold the lands to the claimants or received any value for them, and also that the court below, after full investigation, distinctly found the facts to be against this contention of the Menomonees. (Findings 2 and 3, Rec., p. 7 to 9). So also the treaty of 1831 recites that the 500,000 acres of land were ceded to the United States for the benefit of the claimants in consideration of the payment of twenty thousand dollars by the United States to the Menomonees; but the fact is not only that the title to these 500,000 acres was already in the claimants, but also that they were entitled to a considerable portion, if not all, of the 2,500,000 acres ceded by that treaty to the United States and for which the Menomonees alone were paid.

In view of these facts, it is plain that there is no warrant for the statement of counsel for the United States (Brief, pp. 23–25), that the title to the 500,000-acre tract in Wisconsin was acquired by the claimants at the cost of the United States, and that by the treaty of Buffalo Creek they ceded what cost them nothing, or that this tract was secured to the claimants for a small money consideration paid by the United States to the Menomonees. Stated in its simplicity, the case is, as to this point, that prior to 1827 the claimants had a recognized Indian title to between two and a half and three million acres of land in Wisconsin, and that by the treaties of 1827 and 1831 with the Menomonees and the treaty of Buffalo Creek with the claimants the United States exchanged places with the claimants as to these lands and became vested with the title thereto, and that the claimants have received for them nothing and can receive nothing except what may be awarded them in this cause.

The question of consideration is thus clearly out of the way.

The conduct of the parties after the treaty of Buffalo Creek is wholly inconsistent with the idea of an elimination or vanishing or abandonment of the treaty. It cannot be contended that there was any rescission of the treaty. The court below, in fact, found that there was no rescission. That court says (Rec., p. 41): "The treaty failed; it was not rescinded; it was not violated, but it did not accomplish its full purpose;" and that there was no rescission is plain on familiar principles. There could be no rescission without mutual act, and it is not pretended that there was any act on the part of the Indians expressing a rescission or purpose to rescind. The brief for the Government in effect concedes this; but, apart from any such concession, expressed or implied, the record fails to show any act which, by any strain of language, could be characterized as a rescission.

Nor was there any waiver of the treaty; for the reason that by the failure of the United States to take the initiative, which was incumbent upon it in respect of prescribing a time for the removal of the claimants and making provision therefor, the claimants were never put in a position in which a waiver could be predicated of any act or conduct of theirs. On the contrary, by its course of dealing with the Indians, presently to be alluded to, the Government clearly indicated its view that the Indians asserted and relied upon their rights under the treaty from the first; and, indeed, the only application of the doctrine of waiver to the case applies to the conduct of the United States as evidenced by its dealings with the Indians, and can have reference only to the question of forfeiture.

And, as pointed out in the main brief (pp. 20 to 22, 32), there is no room in the case for this question of forfeiture. The record fails wholly to show any act or conduct by the claimants of which forfeiture may be predicated. On the contrary, the duty and obligation of removal and provision after removal being on the United States, and that duty not having been performed; the impossibility of the

removal of the claimants without the aid of the Government being clearly apparent, and the claimants really never having had any opportunity to do any act which might work a forfeiture, and none of the essentials to a forfeiture existing in the case, it is almost inconceivable that the Government should even pretend that a forfeiture was worked.

Moreover, the very quiescent attitude of both parties, which is assumed by the court as the basis of its conclusion that the treaty was eliminated or vanished, has a directly contrary significance. If the initiative in carrying out the purpose of the treaty was on the United States and that initiative was never taken, how is it possible to talk of abandonment? That the initiative in the matter was on the United States may be assumed as established. This Court said so in Fellows *vs.* Blacksmith and New York *vs.* Dibble, cited in the main brief (pp. 25, 26), and again said so in United States *vs.* Kagama, 118 U. S., 375, 385. Out of abundant caution, however, attention is asked to certain provisions of the treaty which of themselves are conclusive of this question.

By article 5 the Oneidas are allotted a specified place within which to have their share of the Kansas lands, though what that share would be is not stated, depending, as it did, on the number which should go. It was provided that "the same shall be so laid off as to secure them a sufficient quantity of timber for their use." Who but the United States was to point out these lands to the Oneidas and lay them off as promised? And how could the Oneidas go to Kansas until those things had been done?

So, by article 10 the Senecas and the Cayugas and Onondagas residing with them were promised that their share of the lands should be in a certain part of the Kansas reservation, with this significant addition: "and if, on removing west, they find there is not sufficient timber on this tract for their use, then the President shall add thereto sufficient timber land for their accommodation." How was it possi-

ble for the Senecas, Cayugas, and Onondagas to enter Kansas without the guiding hand of the United States?

Similar provision for the Tuscaroras is made by article 14, with the important difference that if on arrival they should not be satisfied with the location assigned them they should "have their lands at such place as the President of the United States shall designate."

But what about those tribes whose lands were not specially designated in the treaty? Recurring to article 5, we see that they were "to have such as shall be set apart by the President." Is it not beyond all need of argument or possibility of denial that none of the Indians could go to Kansas until they knew where to go and what lands to occupy? and that the initiative in this respect, as well as in respect of fixing a time and making provision for removal, was on the United States? To repeat, therefore: if the initiative was thus upon the United States, which did not take it, how is it possible to talk of abandonment?

But the case does not rest on this negative position. The plain fact is that by conduct the most positive of the parties the idea of abandonment is wholly excluded. A very brief exposition of that conduct would seem to make this too clear for argument.

In the first place, all that was to be done on the part of the claimants was done by the mere execution of the treaty. They ceded their Wisconsin lands to the United States and agreed to accept in lieu thereof the lands in Kansas and to be removed thither. The contract expressed by the treaty, so far as it imposed any obligation on the claimants, was completely executed on the ratification of the treaty.

In the next place, the obligations assumed by the United States, if those obligations involved the devotion by the United States of the Kansas lands to the use and occupation of the claimants and their removal thither, have never been performed, and it is a begging of the question to say that the United States has not failed in its performance of its obli-

gations under the treaty, for the very question is what those obligations are or were.

And again, the conduct of the parties is conclusive against any forfeiture or rescission, waiver, abandonment, elimination, or vanishing of the treaty. In fact, the position taken by counsel for Government in the court below was that there was no abandonment or rescission of the treaty, but an abandonment by the claimants of the idea of emigration.

In 1843 (5 Stats., 612) the Government appropriated money to aid in the removal of certain of the claimants and made provision therefor. In 1845 (Rec., p. 19) the Government appointed a commissioner to conduct and superintend such removal. Prior to November 24, 1845 (Finding 12, Rec., p. 19), some of the claimants made further application for removal, but it was not deemed by the Government expedient to enter into any arrangements for this purpose until it was believed that a sufficient number to justify the expenditure incident to removal were prepared to remove. In 1846, by act of June 27, Congress appropriated money to pay the claims of certain beneficiaries of the treaty under articles 9, 11, 12, and 13 thereof (9 Stats., 33, 34). By act of September 21, 1846 (9 Stats., 33, 34), Congress appropriated the several sums of one thousand dollars, four thousand dollars, and two thousand dollars in payment of other sums provided for by the treaty. On July 29, 1848, Congress made similar appropriations (Finding 18, Rec., 21; 9 Stats., 161). On May 30, 1854, Congress passed the Kansas-Nebraska act, referred to on page 30 of the main brief. On March 3, 1857 (11 Stats., 184; finding 18, Rec., 21), Congress appropriated fifteen hundred dollars for William King under article 11, in Schedule 6, of the treaty. On November 5, 1857, after the decision of this Court in the case of Fellows against Blacksmith, the United States made the treaty with the Tonawandas, referred to on pages 11, 18, 27 to 29 of the main brief. On May 8, 1858 (11 Stats., 259), Congress passed the enabling act for the admission

of Kansas into the Union. On May 3, 1859 (11 Stats., 430, 431), Congress made express reservation of the rights of the claimants under the treaty of Buffalo Creek, as set forth in the main brief, pages 30, 31. When the order of the Secretary of the Interior was made, March 21, 1859, directing the survey of the Kansas lands, and before they were proclaimed by the President as part of the public domain, on December 3 and 17, 1860, the claimants employed counsel to protect and prosecute their claims under the treaty, asserting in their powers of attorney that the United States had seized upon the lands, contrary to the obligations of the treaty, and would not permit the claimants to occupy the same or make any disposition thereof, and the claimants have since steadily asserted their said claims, (Finding 17, Rec., p. 21). On January 29, 1861 (12 Stats., 126), Congress admitted Kansas into the Union, expressly saving, as pointed out on page 31 of the main brief, the rights of the claimants in the Kansas lands. In addition, as shown by the records of Congress (see Congressional Globe, 35th Cong., 2d session, part 2, pp. 1634, 1635, 1637, and 1638; p. 359, 1st session, part 1, p. 791; 11 Stats., 436; Executive Document No. 1, 38th Congress, 2d session, p. 188; Executive Document Y, 40th Congress, 3d session, pp. 1, 6, 10), Congress undertook to deal with the rights of the New York Indians to the Kansas lands, and under the treaty of Buffalo Creek, with the result that on November 30, 1868, the President appointed a commissioner, with instructions to proceed to New York and negotiate by treaty the settlement of the claims now made by the claimants, and such treaty was actually made on December 4, 1868; but that treaty failed of ratification before March 3, 1871, when Congress enacted what is now section 2079 of the Revised Statutes, which declares as follows:

"No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United

States may contract by treaty, but no obligation of any treaty lawfully made and ratified with any such nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired."

This act not only left the treaty of 1868 in mid-air, so to speak, but also, in view of the fact that that treaty had actually been executed and was then under consideration, is the clearest possible proof that Congress not only recognized, but also intended to save, all the rights of the claimants in the premises.

As against all this, counsel for the United States rely quite exclusively on the proviso contained in the extract from the Executive Journal of June 11, 1838, when the treaty of Buffalo Creek was under consideration in the Senate, (Finding 10, Rec., p. 10 to 17). That proviso is as follows:

"That if any portion or part of said Indians do not emigrate, the President shall retain a proper proportion of said sum of four hundred thousand dollars, and shall also deduct from the quantity of land allowed west of the Mississippi such number of acres as will leave to each emigrant 320 acres only." (Rec., p. 17.)

In addition to what is said in the main brief (pp. 24 and 25), in relation to this, it may be added, first, that this proviso, if effective, neither added to nor took from the treaty of Buffalo Creek anything in respect of a forfeiture of all or any rights by such of the Indians as might refuse to go after being called upon so to do; in the next place, that the proviso on its face, if it had any meaning at all inconsistent with the terms of the treaty as executed, was an attempt to add to the treaty an amendment to which the assent of the claimants was as necessary as that assent was necessary to the treaty itself; in the next place, that if that proviso was intended to override the treaty by mere legislative action, it was necessarily futile, as being an attempt by one

branch of Congress without the concurrence of the other or of the President to pass a law. In the next place, on March 2, 1839 (same Finding, Rec., p. 17), the Senate formally resolved: "That whenever the President of the United States shall be satisfied that the assent of the Seneca tribe of Indians has been given to the amended treaty of June 11, 1838, with the New York Indians, according to the true intent and meaning of the resolution of the Senate of the 11th of June, 1838, the Senate recommend that the President make proclamation of said treaty and carry the same into effect;" and, finally, that in his proclamation of the treaty made April 4, 1840 (same Finding, Rec., pp. 17, 18), the President, reciting the action of the Senate of June 11, 1838, and a resolution of the Senate of March 25, 1840, "that in the opinion of the Senate the treaty between the United States and the Six Nations of New York Indians, together with the amendments proposed by the Senate of the 11th of June, 1838, have been satisfactorily acceded to and approved of by said tribes, the Seneca tribe included, and that, in the opinion of the Senate, the President is authorized to proclaim the treaty as in full force and operation," proclaimed the treaty *as amended* to be "word for word" as printed in 7 Stats., 550, and that he did "accept, ratify, and confirm said treaty and every article and clause thereof." Clearly, everything tentative in the nature of negotiation or provision in relation to the treaty not to be found in it, as proclaimed "word for word," can have no possible bearing upon the case and is entitled to no consideration.*

* It may be said, in passing, that the designation by the President in this proclamation of the parties to the treaty of Buffalo Creek as the "Six Nations of New York Indians" is of itself sufficient justification for the statement on page 2 of the main brief for the claimants that "these Indians are, in legal effect, the well-known Six Nations," which statement is criticised by counsel for the Government on page 3 of their brief.

It may also be said at this point that the criticism on page 8 of the

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Reliance is also had by counsel for the Government upon the alleged protests by some of the claimants against the treaty of Buffalo Creek, it seeming to be the view of counsel that such effect can be given to these protests as either to evidence an abandonment of the idea of emigration or to work an estoppel. It is deemed unnecessary to add anything to what has been already said on the question of abandonment.

As respects estoppel, it is difficult to see how such a question can possibly be thought to arise in the case. Aside from the legal impossibility of a guardian's asserting estoppel against his ward, it is not pretended that there is an estoppel by deed, and the only sort of estoppel that could possibly be imagined in the case is estoppel *in pais*. As to this, the only possible fact which can be referred to is the fact of the protests above referred to and described in finding 11 (Rec., p. 18). The sum and substance of these protests is that, notwithstanding the clear terms of the treaty, some unidentified individuals among the Indians protested against removal; that the Onondagas officially declared that they would not remove, and treaties subsequent to that of Buffalo Creek appear in

brief for the Government of the statement in the appellants' main brief, on page 6, that "the United States agreed that the lands secured to the claimants by treaty should never be included in any State or Territory of the Union," is equally without point. It is contended by counsel for the Government that the lands agreed not to be included in any State or Territory of the Union were the lands secured to the Indians *by patent* under the treaty. If this contention means anything, it means that the Government cannot be accused of violating that provision of the treaty, because the Government intended to secure to the Indians only lands patented to them, and that, as the Government failed to put the Indians in a position to have the lands patented, it is therefore released from its obligation. The appellants are content to let this contention stand for what it may be worth.

the statutes in relation to this subject-matter; that after the amended treaty had been assented to and ratified and until the treaty with the Senecas of May 20, 1842, the Senecas and the Cayugas and Onondagas residing with them and the Tuscaroras continued to protest against the treaty; that more than five years from the ratification of the treaty the Tuscarora chiefs declared that the tribe would not part with its reservation or move from it, whatever a few individuals might do; and that the Indian protests against the treaty were based upon the grounds that the treaty had been brought about by corrupt means, and that a considerable majority of the Indians wished to remain in New York. It is also found by the court in this connection that the Tuscaroras still occupied their reservation in New York, and that after the Seneca treaty the Indians on the Buffalo Creek reservation gradually withdrew to the Cattaraugus and Allegany reservations, in New York.

All this seems to counsel for the appellants wholly unimportant, as much so as a general refusal to abide by a contract made by one party in the absence of actual tender of performance by the other. In addition to the fact that the claimants were never called upon by the Government to remove, and, therefore, were never put in a position in which to make an effectual or material refusal to go, and the further fact that, as stated by the court below, no such refusal was affirmatively made (Rec., p. 35), the case is that some of the Indians resisted the notion of emigration and continued, after the ratification of the treaty, the talk to that effect which had been so liberally indulged in before that event, and which had, as above adverted to, held up the treaty in the Senate for further consideration and amendment, resulting, as has been shown, in the sending of it back for further consideration by the Indians after explanation of the amendments, and its ultimate proclamation as fully assented to. It may surely be said that if the Government was satisfied to ignore the pro-

tests before the ratification of the treaty, and ratified and proclaimed the treaty notwithstanding those protests, it cannot now be heard to say that it can magnify into greater importance the protests made after the accomplished fact of ratification and proclamation. In other words, if the United States forced the treaty upon the dissentient individuals among the Indians, and took upon itself the duty of prescribing a time for them to emigrate under pain of forfeiture of all the rights secured to them by treaty, it cannot now be heard to say that, having failed in its duty to prescribe a time and make provision for the emigration, it can magnify the protests after ratification into an absolution from its duty.

Tested by the law of estoppel, it is further manifest that there has been nothing done by the Indians or any of them which could possibly work an estoppel. As already stated, the only imaginary estoppel in the case is an estoppel *in pais*. What is meant by such an estoppel is so familiar as hardly to need statement. In order to such an estoppel there must have been a false representation or concealment of material facts, done with knowledge by the party making the false representation or concealment; the party asserting estoppel must have relied upon the false representation or concealment and have been ignorant of the true state of the facts; he must have been induced to act, and actually have acted, upon the false representation or concealment, and his action must have been of a character to result in substantial prejudice were he not permitted to rely upon the estoppel. Plainly, there is no room in the case for the assertion of an estoppel. In the first place, the assumed protests of the Indians did not involve a false representation or concealment of any fact. In the next place, it is not pretended that, as matter susceptible of proof, these protests induced the United States to any line of conduct. There is nowhere in the record, nor can there be produced from any source, the slightest evidence that the United States forebore to pre-

scribe a time for removal because of any conduct on the part of the Indians. In the next place, the United States has suffered no change of position or condition to its prejudice; for if it be said that but for the protests the Kansas lands would not have been thrown open to settlement and the United States thereby deprived of its opportunity to perform specifically its obligations by putting the Indians in possession of them, the answer is, first, that the record and the history of the country are alike silent as to the motive leading the United States to throw open the Kansas lands, except only as that motive is shown in the history of the border troubles in Kansas; and, secondly, that the United States, having received the consideration for the Kansas lands and having had the use thereof during all the intervening years, is not only in as good position as it would have been by doing what the treaty called for, but is also in fact in a much better condition.

It is confidently submitted, therefore, that the question of estoppel, like that of abandonment, may be eliminated from the case. Reduced to its essence, the alleged conduct of the Indians upon which the Government bases its claims of abandonment and estoppel is this: The treaty of Buffalo Creek, while under negotiation, was met by vigorous objection and protests on the part of certain of the Indians. These protests and objections were the subject of prolonged consideration by the Senate of the United States, and caused a reference of the treaty back to the Indians with amendments, under the supervision of a representative of the Government to explain those amendments and take the sense of the Indians upon the question of acceptance. Notwithstanding that all of the Indians were not satisfied and their hostility to the treaty was not appeased, the treaty-making power of the Government ratified and proclaimed the treaty as the law of the land. Notwithstanding this, some of the Indians continued to complain of the provisions of the treaty requiring them to emigrate on

the call of the President, notably the Senecas, who were not silenced until the treaty of 1842. And the Indians not being required to move themselves did not go west, and the United States, on which the duty of taking the initiative rested, did nothing to put the Indians to the alternative of emigrating or forfeiting all their rights under the treaty. Nothing after the proclaiming of the lands as part of the public domain can cut any figure as to this question, and the monumental fact in respect thereof is that when the lands were ordered surveyed and before they were proclaimed as part of the public domain, the Indians took vigorous action by employing counsel and asserting non-performance by the Government of its obligations, from which course the Indians have never swerved until this day.

Respectfully submitted.

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APPENDIX.

MENOMONEE TREATY, FEBRUARY 8, 1831 (7 STAT., 342).

Made and Concluded at the City of Washington, this Eighth Day of February, One Thousand Eight Hundred and Thirty-one, Between John H. Eaton, Secretary of War, and Samuel C. Stambaugh, Indian Agent at Green Bay, Specially Authorized by the President of the United States, and the Undersigned Chiefs and Head Men of the Menomonee Nation of Indians, Fully Authorized and Empowered by the said Nation, to Conclude and Settle all Matters Provided for by this Agreement.

The Menomonee tribe of Indians, by their delegates in council, this day, define the boundaries of their country as follows, to wit; On the east side of Green Bay, Fox river, and Winnebago lake; beginning at the south end of Winnebago lake; thence southeastwardly to the Milwaukee or Manawauky river; thence down said river to its mouth at Lake Michigan; thence north, along the shore of Lake Michigan, to the mouth of Green Bay; thence up Green Bay, Fox river, and Winnebago lake, to the place of beginning. And on the west side of Fox river as follows: Beginning at the mouth of Fox river, thence down the east shore of Green Bay, and across its mouth, so as to include all the islands of the "Grand Traverse;" thence westerly, on the highlands between the Lake Superior and Green Bay, to the upper forks of the Menomonee river; thence to the Plover portage of the Wisconsin river; thence up the Wisconsin river, to the Soft Maple river; thence to the source of the Soft Maple river; thence west to the Plume river, which falls into the Chippeway river; thence down said Plume river to its mouth; thence down the Chippeway river thirty miles; thence easterly to the forks of the Manoy river, which falls into the Wisconsin river; thence down the said Manoy river to its mouth; thence down the Wisconsin river to the Wisconsin portage; thence across the said portage to the Fox river; thence down Fox river to its mouth at Green Bay, or the place of beginning.

The country described within the above boundaries, the Menomonees claim as the exclusive property of their tribe. Not yet having disposed of any of their lands, they receive no annuities from the United States: whereas their brothers the Pootowottomees on the south, and the Winnebagoes on the west, have sold a great portion of their country, receive large annuities, and are now encroaching upon the lands of the Menomonees. For the purposes, therefore, of establishing the boundaries of their country, and of

ceding certain portions of their lands to the United States, in order to secure great and lasting benefits to themselves and posterity, as well as for the purpose of settling the long-existing dispute between themselves and the several tribes of the New York Indians, who claim to have purchased a portion of their lands, the undersigned, chiefs and head men of the Menomonee tribe, stipulate and agree with the United States, as follows:

First. The Menomonee tribe of Indians declare themselves the friends and allies of the United States, under whose parental care and protection they desire to continue; and although always protesting that they are under no obligation to recognize any claim of the New York Indians to any portion of their country; that they neither sold, nor received any value, for the land claimed by these tribes; yet, at the solicitation of their great father, the President of the United States, and as an evidence of their love and veneration for him, they agree that such part of the land described, being within the following boundaries, as he may direct, may be set apart as a home to the several tribes of the New York Indians, who may remove to, and settle upon the same, within three years from the date of this agreement, viz: Beginning on the west side of Fox river, near the "Little Kackalin," at a point known as the "Old Mill-dam;" thence northwest forty miles; thence northeast to the Oconto creek, falling into Green Bay; thence down said Oconto creek to Green Bay; thence up and along Green Bay and Fox river to the place of beginning; excluding therefrom all private land claims confirmed, and also the following reservation for military purposes; beginning on the Fox river, at the mouth of the first creek above Fort Howard; thence north sixty-four degrees west to Duck creek; thence down said Duck creek to its mouth; thence up and along Green Bay and Fox river to the place of beginning. The Menomonee Indians, also reserve, for the use of the United States, from the country herein designated for the New York Indians, timber and firewood for the United States garrison, and as much land as may be deemed necessary for public highways, to be located by the direction, and at the discretion of the President of the United States. The country hereby ceded to the United States, for the benefit of the New York Indians, contains by estimation about five hundred thousand acres, and includes all their improvements on the west side of Fox river. As it is intended for a home for the several tribes of the New York Indians, who may be residing upon the lands at the expiration of three years from this date, and for none others, the President of the United States is hereby empowered to apportion the lands among the actual occupants at that time, so as not to assign to any tribe a greater number of acres than may be equal to one hundred for each soul actually settled upon the lands, and if, at the time of such apportionment, any lands shall remain unoccupied by any tribe of the New York Indians, such portion as would have belonged to said Indians, had it been occupied, shall revert to the United States. That portion, if any, so reverting, to be laid off by

the President of the United States. It is distinctly understood, that the lands hereby ceded to the United States for the New York Indians, are to be held by those tribes, under such tenure as the Menomonee Indians now hold their lands, subject to such regulations and alterations of tenure, as Congress and the President of the United States shall, from time to time, think proper to adopt.

Second. For the above cession to the United States, for the benefit of the New York Indians, the United States consent to pay the Menomonee Indians, twenty thousand dollars; five thousand to be paid on the first day of August next, and five thousand annually thereafter; which sums shall be applied to the use of the Menomonees, after such manner as the President of the United States may direct.

Third. The Menomonee tribe of Indians, in consideration of the kindness and protection of the Government of the United States, and for the purpose of securing to themselves and posterity, a comfortable home, hereby cede and forever relinquish to the United States, all their country on the southeast side of Winnebago lake, Fox river, and Green Bay, which they describe in the following boundaries, to wit: beginning at the south end of Winnebago lake, and running in a southeast direction to Milwauky or Manawauky river; thence down said river to its mouth; thence north, along the shore of Lake Michigan, to the entrance of Green Bay; thence up and along Green Bay, Fox river, and Winnebago lake, to the place of beginning; excluding all private land claims which the United States have heretofore confirmed and sanctioned.

It is also agreed that all the islands which lie in Fox river and Green Bay, are likewise ceded; the whole comprising by estimation, two million five hundred thousand acres.

Fourth. The following-described tract of land, at present owned and occupied by the Menomonee Indians, shall be set apart, and designated for their future homes, upon which their improvements as an agricultural people are to be made: beginning on the west side of Fox river, at the "Old Milldam" near the "Little Kackalin," and running up and along said river, to the Winnebago lake; thence along said lake to the mouth of Fox river; thence up Fox river to the Wolf river; thence up Wolf river to a point southwest of the west corner of the tract herein designated for the New York Indians; thence northeast to said west corner; thence southeast to the place of beginning. The above reservation being made to the Menomonee Indians for the purpose of weaning them from their wandering habits, by attaching them to comfortable homes, the President of the United States, as a mark of affection for his children of the Menomonee tribe, will cause to be employed five farmers of established character for capacity, industry, and moral habits, for ten successive years, whose duty it shall be to assist the Menomonee Indians in the cultivation of their farms, and to instruct their children in the business and occupation of farming. Also, five females

shall be employed of like good character, for the purpose of teaching young Menomonee women, in the business of useful housewifery, during a period of ten years.—The annual compensation allowed to the farmers shall not exceed five hundred dollars, and that of the females three hundred dollars. And the United States will cause to be erected, houses suited to their condition, on said lands, as soon as the Indians agree to occupy them, for which ten thousand dollars shall be appropriated; also, houses for the farmers, for which three thousand dollars shall be appropriated, to be expended under the direction of the Secretary of War. Whenever the Menomonees thus settle their land, they shall be supplied with useful household articles, horses, cows, hogs, and sheep, farming utensils, and other articles of husbandry necessary to their comfort, to the value of six thousand dollars; and they desire that some suitable device may be stamped upon such articles, to preserve them from sale or barter, to evil-disposed white persons: none of which, nor any other articles with which the United States may at any time furnish them, shall be liable to sale, or be disposed of or bargained, without permission of the agent. The whole to be under the immediate care of the farmers employed to remain among said Indians, but subject to the general control of the United States Indian agent at Green Bay acting under the Secretary of War. The United States will erect a grist and saw mill on Fox river, for the benefit of the Menomonee Indians, and employ a good miller, subject to the direction of the agent, whose business it shall be to grind the grain, required for the use of the Menomonee Indians, and saw the lumber necessary for building on their lands, as also to instruct such young men of the Menomonee nation, as desire to, and conveniently can be instructed in the trade of a miller. The expenses of erecting such mills, and a house for the miller to reside in, shall not exceed six thousand dollars, and the annual compensation of the miller shall be six hundred dollars, to continue for ten years. And if the mills so erected by the United States, can saw more lumber or grind more grain, than is required for the proper use of said Menomonee Indians, the proceeds of such milling shall be applied to the payment of other expenses occurring in the Green Bay agency, under the direction of the Secretary of War.

In addition to the above provision made for the Menomonee Indians, the President of the United States will cause articles of clothing to be distributed among their tribe at Green Bay, within six months from the date of this agreement, to the amount of eight thousand dollars, and flour and wholesome provisions, to the amount of one thousand dollars, one thousand dollars to be paid in specie. The cost of the transportation of the clothing and provisions, to be included in the sum expended. There shall also be allowed annually thereafter, for the space of twelve successive years, to the Menomonee tribe, in such manner and form as the President of the United States shall deem most beneficial and advantageous to the Indians, the sum of six thousand dollars. As a matter of great

importance to the Menomonees, there shall be one or more gun and blacksmith shops erected, to be supplied with the necessary quantity of iron and steel, which, with a shop at Green Bay, shall be kept up for the use of the tribe, and continued at the discretion of the President of the United States. There shall also be a house for an interpreter to reside in, erected at Green Bay, the expenses not to exceed five hundred dollars.

Fifth. In the treaty of Butte des Mortes, concluded in August 1827, an article is contained, appropriating one thousand five hundred dollars annually, for the support of schools in the Menomonee country. And the representatives of the Menomonee nation, who are parties hereto, require, and it is agreed to, that said appropriation shall be increased five hundred dollars, and continued for ten years from this date, to be placed in the hands of the Secretary at War, in trust for the exclusive use and benefit of the Menomonee tribe of Indians, and to be applied by him to the education of the children of the Menomonee Indians, in such manner as he may deem most advisable.

Sixth. The Menomonee tribe of Indians shall be at liberty to hunt and fish on the lands they have now ceded to the United States, on the east side of Fox river and Green Bay, with the same privileges they at present enjoy until it be surveyed and offered for sale by the President; they conducting themselves peaceably and orderly. The chiefs and warriors of the Menomonee nation, acting under the authority and on behalf of their tribe, solemnly pledge themselves to preserve peace and harmony between their people and the Government of the United States forever. They neither acknowledge the power nor protection of any other State or people. A departure from this pledge by any portion of their tribe, shall be a forfeiture of the protection of the United States Government, and their annuities will cease. In thus declaring their friendship for the United States, however, the Menomonee tribe of Indians, having the most implicit confidence in their Great Father, the President of the United States, desire that he will, as a kind and faithful guardian of their welfare, direct the provisions of this contract to be carried into immediate effect. The Menomonee chiefs request that such part of it as relates to the New York Indians, be immediately submitted to the representatives of their tribes. And if they refuse to accept the provision made for their benefit, and to remove upon the lands set apart for them, on the west side of Fox river, that he will direct their immediate removal from the Menomonee country; but if they agree to accept of the liberal offer made to them by the parties to this compact, then the Menomonee tribe as dutiful children of their great father the President, will take them by the hand as brothers, and settle down with them in peace and friendship.

The boundary, as stated and defined in this agreement, of the Menomonee country, with the exception of the cessions hereinbefore made to the United States, the Menomonees claim as their

country; that part of it adjoining the farming country, on the west side of Fox river, will remain to them as heretofore, for a hunting ground, until the President of the United States, shall deem it expedient to extinguish their title. In that case, the Menomonee tribe promise to surrender it immediately, upon being notified of the desire of Government to possess it. The additional annuity then to be paid to the Menomonee tribe, to be fixed by the President of the United States. It is conceded to the United States that they may enjoy the right of making such roads, and of establishing such military posts, in any part of the country now occupied by the Menomonee nation, as the President at any time may think proper.

As a further earnest of the good feeling on the part of their great father, it is agreed that the expenses of the Menomonee delegation to the city of Washington, and of returning will be paid, and that a comfortable suit of clothes will be provided for each; also, that the United States will cause four thousand dollars to be expended in procuring fowling guns, and ammunition for them; and likewise, in lieu of any garrison rations, hereafter allowed or received by them, there shall be procured and given to said tribe one thousand dollars' worth of goods and wholesome provisions annually, for four years, by which time it is hoped that their hunting habits may cease, and their attention be turned to the pursuits of agriculture.

In testimony whereof, the respective parties to this agreement have severally signed the same, this 8th February, 1831.

[Here follow the signatures to the treaty.]

Whereas certain articles of agreement were entered into and concluded at the city of Washington, on the eighth day of February instant, between the undersigned, commissioners on behalf of the United States, and the chiefs and warriors, representing the Menomonee tribe of Indians, whereby a portion of the Menomonee country, on the northwest side of Fox river and Green Bay, was ceded to the United States, for the benefit of the New York Indians, upon certain conditions and restrictions therein expressed: And whereas it has been represented to the parties to that agreement, who are parties hereto, that it would be more desirable and satisfactory to some of those interested that one or two immaterial changes be made in the first and sixth articles, so as not to limit the number of acres to one hundred for each soul who may be settled upon the land when the President apportions it, as also to make unlimited the time of removal and settlement upon these lands by the New York Indians, but to leave both these matters discretionary with the President of the United States.

Now, therefore, as a proof of the sincerity of the professions made by the Menomonee Indians, when they declared themselves anxious to terminate in an amicable manner, their disputes with the New

York Indians, and also as a further proof of their love and veneration for their great father, the President of the United States, the undersigned, representatives of the Menomonee tribe of Indians, unite and agree with the commissioners aforesaid, in making and acknowledging the following supplementary articles a part of their former aforesaid agreement.

First. It is agreed between the undersigned, commissioners on behalf of the United States, and the chiefs and warriors representing the Menomonee tribe of Indians, that, for the reasons above expressed, such parts of the first article of the agreement, entered into between the parties hereto, on the eighth instant, as limits the removal and settlement of the New York Indians upon the lands therein provided for their future homes, to three years, shall be altered and amended, so as to read as follows: That the President of the United States shall prescribe the time for the removal and settlement of the New York Indians upon the lands thus provided for them; and, at the expiration of such reasonable time, he shall apportion the land among the actual settlers, in such manner as he shall deem equitable and just. And if, within such reasonable time, as the President of the United States shall prescribe for that purpose, the New York Indians, shall refuse to accept the provisions made for their benefit, or having agreed, shall neglect or refuse to remove from New York, and settle on the said lands, within the time prescribed for that purpose, that then, and in either of these events, the lands aforesaid shall be, and remain the property of the United States, according to said first article, excepting so much thereof, as the President shall deem justly due to such of the New York Indians, as shall actually have removed to, and settled on the said lands.

Second. It is further agreed that the part of the sixth article of the agreement aforesaid, which requires the removal of those of the New York Indians, who may not be settled on the lands at the end of three years, shall be so amended as to leave such removal discretionary with the President of the United States. The Menomonee Indians having full confidence, that, in making his decision, he will take into consideration the welfare and prosperity of their nation.

Done and signed at Washington, this 17th of February, 1831.

[Here follow the signatures.]

(NOTE.—This treaty was ratified with the following proviso contained in the resolution of the Senate:

Provided, That for the purpose of establishing the rights of the New York Indians, on a permanent and just footing, the said treaty shall be ratified with the express understanding that two townships of land on the east side of the Winnebago lake, equal to forty-six thousand and eighty acres shall be laid off, (to commence at some point to be agreed on,) for the use of the Stockbridge and Munsee tribes; and

that the improvements made on the lands now in the possession of the said tribes, on the east side of the Fox river, which said lands are to be relinquished, shall, after being valued by a commissioner to be appointed by the President of the United States, be paid for by the Government: *Provided*, however, That the valuation of such improvements, shall not exceed the sum of twenty-five thousand dollars: and that there shall be one township of land, adjoining the foregoing, equal to twenty-three thousand and forty acres, laid off and granted for the use of the Brothertown Indians, who are to be paid, by the Government the sum of one thousand six hundred dollars for the improvements on the lands now in their possession, on the east side of Fox river, and which lands are to be relinquished by said Indians: Also, that a new line shall be run, parallel to the southwestern boundary line, or course of the tract of five hundred thousand acres described in the first article of this treaty, and set apart for the New York Indians, to commence at a point on the west side of the Fox river, and one mile above the Grand Shute on Fox river, and at a sufficient distance from the said boundary line as established by the said first article, as shall comprehend the additional quantity of two hundred thousand acres of land, on and along the west side of Fox river, without including any of the confirmed private land claims on the Fox river, and which two hundred thousand acres shall be a part of the five hundred thousand acres intended to be set apart for the Six Nations of the New York Indians and the St. Regis tribe; and that an equal quantity to that which is added on the southwestern side shall be taken off from the northeastern side of the said tract, described in that article on the Oconto creek, to be determined by a commissioner, to be appointed by the President of the United States; so that the whole number of acres to be granted to the Six Nations and St. Regis tribe of Indians, shall not exceed the quantity originally stipulated by the treaty.)

Winnebago Treaty, September 15, 1832 (7 Stat., 370).

Articles of a Treaty Made and Concluded, at Fort Armstrong, Rock Island, Illinois, Between the United States of America, by Their Commissioners, Major General Winfield Scott, of the United States Army, and His Excellency John Reynolds, Governor of the State of Illinois, and the Winnebago Nation of Indians, Represented in General Council by the Undersigned Chiefs, Head Men, and Warriors.

Article I. The Winnebago nation hereby cede to the United States, forever, all the lands, to which said nation have title or claim, lying to the south and east of the Wisconsin river, and the Fox river of Green Bay; bounded as follows, viz: Beginning at the mouth of the Pee-kee-tol a-ka river; thence up Rock river to its source; thence, with a line dividing the Winnebago nation from other Indians east of the Winnebago lake, to the Grande Chute; thence, up Fox river to the Winnebago lake, and with the northwestern shore of the said lake, to the inlet of Fox river; thence, up said river to Lake Puckaway, and with the eastern shore of the same to its most southeasterly bend; thence with the line of a purchase made of the Winnebago nation, by the treaty at Prairie du Chene, the first day of August, one thousand eight hundred and twenty-nine to the place of beginning.

Article II. In part consideration of the above cession it is hereby stipulated and agreed, that the United States grant to the Winnebago nation, to be held as other Indians lands are held, that part of the tract of country on the west side of the Mississippi, known, at present, as the Neutral ground, embraced within the following limits, viz: beginning on the west bank of the Mississippi river, twenty miles above the mouth of the Upper Ioway river, where the line of the lands purchased of the Sioux Indians, as described in the third article of the treaty of Prairie du Chien, of the fifteenth day of July, one thousand eight hundred and thirty, begins; thence with said line, as surveyed and marked, to the eastern branch of the Red Cedar creek, thence down said creek, forty miles, in a straight line, but following its windings, to the line of a purchase, made of the Sac and Fox tribes of Indians, as designated in the second article of the before-recited treaty; and thence along the southern line of said last-mentioned purchase, to the Mississippi, at the point marked by the surveyor appointed, by the President of the United States, on the margin of said river; and thence, up said river, to the place of beginning. The exchange of the two tracts of country to take place on or before the first day of June next; that is to say, on or before that day, all the Winnebagoes now residing within the country ceded by them, as above, shall leave the said country, when, and not before, they shall be allowed to enter upon the country granted by the United States, in exchange.

Article III. But, as the country hereby ceded by the Winnebago nation is more extensive and valuable than that given by the United States in exchange; it is further stipulated and agreed, that

the United States pay to the Winnebago nation, annually, for twenty-seven successive years, the first payment to be made in September of the next year, the sum of ten thousand dollars, in specie; which sum shall be paid to the said nation at Prairie du Chien, and Fort Winnebago, in sums proportional to the numbers residing most conveniently to those places respectively.

Article IV. It is further stipulated and agreed, that the United States shall erect a suitable building, or buildings, with a garden and a field attached, somewhere near Fort Crawford, or Prairie du Chien, and establish and maintain therein, for the term of twenty-seven years, a school for the education, including clothing, board, and lodging, of such Winnebago children as may be voluntarily sent to it: the school to be conducted by two or more teachers, male and female, and the said children to be taught reading, writing, arithmetic, gardening, agriculture, carding, spinning, weaving, and sewing, according to their ages and sexes, and such other branches of useful knowledge as the President of the United States may prescribe: *Provided*, That the annual cost of the school shall not exceed the sum of three thousand dollars, And, in order that the said school may be productive of the greatest benefit to the Winnebago nation, it is hereby subjected to the visits and inspections of his Excellency the Governor of the State of Illinois for the time being; the United States, General Superintendents of Indian affairs; of the United States, agents who may be appointed to reside among the Winnebago Indians, and of any officer of the United States Army, who may be of or above the rank of major: *Provided*, That the commanding officer of Fort Crawford shall make such visits and inspections frequently, although of an inferior rank.

Article V. And the United States further agree to make to the said nation of Winnebago Indians the following allowances, for the period of twenty-seven years, in addition to the considerations hereinbefore stipulated: that is to say: for the support of six agriculturists, and the purchase of twelve yokes of oxen, ploughs, and other agricultural implements, a sum not exceeding two thousand five hundred dollars per annum; to the Rock River band of Winnebagoes, one thousand five hundred pounds of tobacco, per annum; for the services and attendance of a physician at Prairie du Chien, and of one at Fort Winnebago, each, two hundred dollars, per annum.

Article VI. It is further agreed that the United States remove and maintain, within the limits prescribed in this treaty, for the occupation of the Winnebagoes, the blacksmith's shop, with the necessary tools, iron and steel, heretofore allowed to the Winnebagoes, on the waters of the Rock river, by the third article of the treaty made with the Winnebago nation, at Prairie du Chien, on the first day of August, one thousand eight hundred and twenty-nine.

Article VII. And it is further stipulated, and agreed by the United States, that there shall be allowed and issued to the Winnebagoes, required by the terms of this treaty to remove within their new limits, soldier's rations of bread and meat, for thirty days:

Provided, That the whole number of such rations shall not exceed sixty thousand.

Article VIII. The United States, at the request of the Winnebago nation of Indians, aforesaid, further agree to pay, to the following-named persons, the sums set opposite their names respectively, viz:

To Joseph Ogee, two hundred and two dollars and fifty cents,

To William Wallace four hundred dollars, and

To John Dougherty, four hundred and eighty dollars: amounting, in all, to one thousand and eighty-two dollars and fifty cents, which sum is in full satisfaction of the claims brought by said persons against said Indians, and by them acknowledged to be justly due.

Article IX. On demand of the United States' commissioners, it is expressly stipulated and agreed, that the Winnebago nation shall promptly seize and deliver up to the commanding officer of some United States military post to be dealt with according to law, the following individual Winnebagoes, viz: Koo-zee-ray-Kaw, Moy-che-nun-Kaw, Tshik-o-ke-maw-Kaw, Ah-hunsee-kaw, and Waw-zee-ree-kay-hee-wee-kaw, who are accused of murdering or of being concerned in the murdering of certain American citizens at or near the Blue mound, in the Territory of Michigan; Nau-saw-nay-he-kaw, and Toag-ra-naw-koo-ray-see-ray-kaw; who are accused of murdering or of being concerned in murdering, one or more American citizens, at or near Killogg's Grove, in the State of Illinois; and also Waw-kee-aun-shaw, and his son, who wounded, in attempting to kill, an American soldier, at or near Lake Kosh-ke-nong, in the said Territory; all of which offences were committed in the course of the past spring and summer. And till these several stipulations are faithfully complied with by the Winnebago nation it is further agreed that the payment of the annuity of ten thousand dollars, secured by this treaty shall be suspended.

Article X. At the special request of the Winnebago nation, the United States agree to grant, by patent, in fee-simple, to the following-named persons, all of whom are Winnebagoes by blood, lands as follows: To Pierre Paquette, three sections; to Pierre Paquette Junior, one section; to Therese Paquette, one section; and to Caroline Harney, one section. The lands to be designated under the direction of the President of the United States, within the country herein ceded by the Winnebago nation.

Article XI. In order to prevent misapprehensions that might disturb peace and friendship between the parties to this treaty, it is expressly understood that no band or party of Winnebagoes shall reside, plant, fish or hunt after the first day of June next, on any portion of the country herein ceded to the United States.

Article XII. This treaty shall be obligatory on the contracting parties, after it shall be ratified by the President and Senate of the United States.

Done at Fort Armstrong, Rock Island, Illinois, this fifteenth day of September one thousand eight hundred and thirty-two.

[Here follow the signatures.]

MENOMONEE TREATY, OCTOBER 27, 1832 (7 STAT., 405).

Whereas articles of agreement between the United States of America, and the Menomonee Indians, were made and concluded at the city of Washington, on the eighth day of February A. D. one thousand eight hundred and thirty-one, by John H. Eaton, and Samuel C. Stambaugh, commissioners on the part of the United States, and certain chiefs and head men of the Menomonee nation, on the part of said nation; to which articles, an additional or supplemental article was afterwards made, on the seventeenth day of February in the same year, by which the said Menomonee nation agree to cede to the United States certain parts of their land; and that a tract of country therein defined shall be set apart for the New York Indians. All which with the many other stipulations therein contained will more fully appear, by reference to the same. Which said agreements thus forming a *Treaty*, were laid before the Senate of the United States during their then session: but were not at said session acted on by that body. Whereupon a further agreement was on the fifteenth day of March, in the same year, entered into for the purpose of preserving the provisions of the treaty, made as aforesaid; by which it was stipulated that the said articles of agreement, concluded as aforesaid, should be laid before the next Senate of the United States, at their ensuing session; and if sanctioned and confirmed by them, that each and every article thereof should be as binding and obligatory upon the parties respectively, as if they had been sanctioned at the previous session. *And whereas*, the Senate of the United States, by their resolution of the twenty-fifth day of June one thousand eight hundred and thirty-two, did advise and consent to accept, ratify and confirm the same, and every clause and article thereof upon the *conditions* expressed in the proviso, contained in their said resolution: which proviso is as follows: "Provided that for the purpose of establishing the rights of the New York Indians, on a permanent and just footing, the said treaty shall be ratified, with the express understanding that two townships of land on the east side of Winnebago lake equal to forty-six thousand and eighty acres shall be laid off (to commence at some point to be agreed on) for the use of the Stockbridge and Munsee tribes; and that the improvements made on the lands now in the possession of the said tribes on the east side of the Fox river, which said lands are to be relinquished shall, after being valued by a commissioner to be appointed by the President of the United States, be paid for by the Government: Provided, however, that the valuation of such improvements shall not exceed the sum of twenty-five thousand dollars. And that there shall be one township of land adjoining the foregoing, equal to twenty-three thousand and forty acres, laid off and granted for the use of the Brothertown Indians, who are to be paid by the Government, the sum of one thousand six hundred dol-

lars for the improvements on the lands now in their possession, on the east side of Fox river, and which lands are to be relinquished by said Indians: also that a new line shall be run, parallel to the southwestern boundary line or course of the tract of five hundred thousand acres, described in the first article of this treaty, and set apart for the New York Indians, to commence at a point on the west side of the Fox river, and one mile above the Grand Shute, on Fox river, and at a sufficient distance from the said boundary line as established by the said first article, as shall comprehend the additional quantity of two hundred thousand acres of land on and along the west side of Fox river, without including any of the confirmed private land claims on the Fox river; and which two hundred thousand acres shall be a part of the five hundred thousand acres, intended to be set apart for the Six Nations of the New York Indians and the St. Regis tribe; and that an equal quantity to that which is added to the southwestern side shall be taken off from the northeastern side of the said tract described in that article, on the Oconto creek, to be determined by a commissioner to be appointed by the President of the United States; so that the whole number of acres to be granted to the Six Nations, and St. Regis tribe of Indians, shall not exceed the quantity originally stipulated by the treaty." And whereas, before the treaty aforesaid *conditionally* ratified, according to the proviso to the resolution of the Senate above recited, could be obligatory upon the said Menomonee nation, their assent to the same must be had and obtained.

And whereas, the Honorable Lewis Cass, Secretary of the Department of War, by his letter of instructions of the eleventh day of September A. D. 1832, did authorize and request George B. Porter, governor of the Territory of Michigan to proceed to Green Bay, and endeavor to procure the assent of the Menomonees to the change proposed by the Senate, as above set forth; urging the necessity of directing his first efforts to an attempt to procure the unconditional assent of the Menomonees to the said treaty, as ratified by the Senate. But should he fail in this object that he would then endeavor to procure their assent to the best practicable terms, short of those proposed by the Senate; giving them to understand that he merely received such proposition as they might make, with a view to transmit it for the consideration of the President and Senate of the United States. And if this course became necessary that it would be very desirable that the New York Indians should also signify their acceptance of the modifications required by the Menomonees.

And whereas, in pursuance of the said instructions the said George B. Porter proceeded to Green Bay and having assembled all the chiefs and head men of the Menomonee nation, in council, submitted to them, on the twenty-second day of October, A. D. one thousand eight hundred and thirty-two, the said proviso annexed to the resolution aforesaid of the Senate of the United States, for the ratification of the said treaty: and advised and urged on them the

propriety of giving their assent to the same. And the said chiefs and head men having taken time to deliberate and reflect on the proposition so submitted to them and which they had been urged to assent to, did in the most positive and decided manner, refuse to give their assent to the same. (The many reasons assigned for this determination, by them, being reported in the journal of the said commissioner which will be transmitted with this agreement.)

And whereas after failing in the object last stated, the said George B. Porter endeavored to procure the assent of the said chiefs and head men of the Menomonee nation to the best practicable terms short of those proposed by the Senate of the United States; and after much labor and pains, entreaty and persuasion, the said Menomonees consented to the following, as the modifications which they would make; and which are reduced to writing, in the form of an agreement, as the best practicable terms which could be obtained from them, short of those proposed by the Senate of the United States, which they had previously positively refused to accede to. And as the modifications so made and desired have been acceded to by the New York Indians, with a request that the treaty thus modified might be ratified and approved by the President and the Senate of the United States, it is the anxious desire of the Menomonees also, that the treaty, with these alterations may be ratified and approved without delay, that they may receive the benefits and advantage secured to them by the several stipulations of the said treaty, of which they have been so long deprived.

The following is the article of agreement made between the said George B. Porter, commissioner on the part of the United States, specially appointed as aforesaid, and the said Menomonee nation, through their chiefs and head men on the part of their nation.

First. The said chiefs and head men of the Menomonee nation of Indians do not object to any of the matters contained in the proviso annexed to the resolution of the Senate of the United States, so far as the same relate to the granting of three townships of land on the east side of Winnebago lake, to the Stockbridge, Munsee and Brothertown tribes; to the valuation and payment for their improvements, etc. (ending with the words "*and which lands are to be relinquished by said Indians.*") They therefore assent to the same.

Second. The said chiefs and head men of the Menomonee nation of Indians, objecting to all the matters contained in the said proviso annexed to the resolution of the Senate of the United States so far as the same relate to the running of a new line parallel to the southwestern boundary line or course of the tract of five hundred thousand acres, described in the first article of the treaty, and set apart for the New York Indians, to commence at a point on the southwestern side of Fox river, and one mile above the Grand Shute, on Fox river, and at a sufficient distance from the said boundary line, as established by the said first article, as shall comprehend the additional quantity of two hundred thousand acres of land, on and along the west side of the Fox river, without including

any of the confirmed private land claims, on the Fox river, to compose a part of the five hundred thousand acres intended to be set apart for the Six Nations of the New York Indians and St. Regis tribe, *agree* in lieu of this proposition, to set off a like quantity of two hundred thousand acres as follows: The said Menomonee nation hereby agree to cede for the benefit of the New York Indians along the southwestern boundary line of the present five hundred thousand acres described in the first article of the treaty as set apart for the New York Indians, a tract of land; bounded as follows. Beginning on the said treaty line, at the Old Mill dam on Fox river, and thence extending up along Fox river to the little *Rapid Croche*; from thence running a northwest course three miles; thence on a line running parallel with the several courses of Fox river, and three miles distant from the river, until it will intersect a line, running on a northwest course, commencing at a point one mile above the Grand Shute; thence on a line running northwest, so far as will be necessary to include between the said last line and the line described as the southwestern boundary line of the five hundred thousand acres in the treaty aforesaid, the quantity of two hundred thousand acres; and thence running northeast until it will intersect the line, forming the southwestern boundary line aforesaid; and from thence along the said line to the Old Mill dam, or place of beginning, containing two hundred thousand acres. Excepting and reserving therefrom the *privilege* of Charles A. Grignon, for erecting a mill on Apple creek, etc., as approved by the Department of War on the twenty-second day of April one thousand eight hundred and thirty-one and all confirmed private land claims on the Fox river. The lines of the said tract of land so granted to be run, marked and laid off without delay, by a commissioner to be appointed by the President of the United States. And that in exchange for the above, a quantity of land equal to that which is added to the southwestern side shall be taken off from the northeastern side of the said tract, described in that article, on the Oconto creek, to be run, marked and determined, by the commissioner to be appointed by the President of the United States, as aforesaid, so that the whole number of acres to be granted to the Six Nations and St. Regis tribe of Indians, shall not exceed the quantity of five hundred thousand acres.

Third. The said chiefs and head men of the Menominee nation agree, that in case the said original treaty, made as aforesaid, and the supplemental articles thereto, be ratified and confirmed at the ensuing session of the Senate of the United States with the modifications contained in this agreement, that each and every article thereof shall be as binding and obligatory upon the parties respectively, as if they had been sanctioned at the times originally agreed upon.

In consideration of the above voluntary sacrifices of their interest, made by the said Menominee nation and as evidence of the good feeling of their great father, the President of the United States, the said George B. Porter, commissioner as aforesaid, has delivered to

the said chiefs, head men and the people of the said Menominee nation, here assembled, presents in clothing to the amount of one thousand dollars: five hundred bushels of corn, ten barrels of pork, and ten barrels of flour, &c., &c.

In witness whereof, we have hereunto set our hands and seals, at the agency-house, at Green Bay, this twenty-seventh day of October in the year of our Lord one thousand eight hundred and thirty-two.

[Here follow the signatures.]

Appendix.

To all to whom these presents shall come, the undersigned, chiefs and head men of the sundry tribes of New York Indians (as set forth in the specifications annexed to their signatures), send greeting:

Whereas a tedious, perplexing and harassing dispute and controversy have long existed between the Menominee nation of Indians and the New York Indians, more particularly known as the Stockbridge, Munsee and Brothertown tribes, the Six Nations and St. Regis tribe. The treaty made between the said Menominee nation and the United States, and the conditional ratification thereof by the Senate of the United States, being stated and set forth in the within agreement, entered into between the chiefs and head men of the said Menominees, and George B. Porter, governor of Michigan, commissioner specially appointed, with instructions referred to in the said agreement. And whereas the undersigned, are satisfied and believe that the best efforts of the said commissioner were directed and used to procure, if practicable, the unconditional assent of the said Menominees to the change proposed by the Senate of the United States in the ratification of the said treaty: but without success. And whereas the undersigned further believe that the terms stated in the within agreement are the best practicable terms, short of those proposed by the Senate of the United States, which could be obtained from the said Menominees; and being asked to signify our acceptance of the modifications proposed as aforesaid by the Menominees we are compelled by a sense of duty and propriety to say that we do hereby accept of the same. So far as the tribes to which we belong are concerned, we are perfectly satisfied, that the treaty should be ratified on the terms proposed by the Menominees. We further believe that the tract of land which the Menominees in the within agreement, are willing to cede, in exchange for an equal quantity on the northeast side of the tract of five hundred thousand acres, contains a sufficient quantity of good land, favorably and advantageously situated to answer all the wants of the New York Indians, and St. Regis tribe. For the purpose, then, of putting an end to strife, and that we may

all sit down in peace and harmony, we thus signify our acceptance of the modifications proposed by the Menomonees: and we most respectfully request that the treaty as now modified by the agreement this day entered into with the Menomonees, may be ratified and approved by the President and Senate of the United States.

In witness whereof, we have hereunto set our hands and seals at the agency-house at Green Bay, this twenty-seventh day of October in the year of our Lord one thousand eight hundred and thirty-two.

[Here follow the signatures.]

Treaty of Buffalo Creek, January 15, 1838 (7 Stat., 550).

As amended by the Senate and assented to by the several tribes, 1838.

Treaty with the New York Indians, as Amended by the Senate of the United States, June 11, 1838.

Articles of a Treaty Made and Concluded at Buffalo Creek, in the State of New York, the Fifteenth Day of January, in the Year of our Lord One Thousand Eight Hundred and Thirty-eight, by Ransom H. Gillet, a Commissioner on the Part of the United States, and the Chiefs, Head Men, and Warriors of the Several Tribes of New York Indians Assembled in Council, Witnesseth:

Whereas, the Six Nations of New York Indians not long after the close of the war of the Revolution, became convinced from the rapid increase of the white settlements around, that the time was not far distant when their true interests must lead them to seek a new home among their red brethren in the West: And whereas this subject was agitated in a general council of the Six Nations as early as 1810, and resulted in sending a memorial to the President of the United States, inquiring whether the Government would consent to their leaving their habitations and their removing into the neighborhood of their western brethren, and if they could procure a home there, by gift or purchase, whether the Government would acknowledge their title to the lands so obtained in the same manner it had acknowledged it in those from whom they might receive it; and further, whether the existing treaties would, in such a case, remain in full force, and their annuities be paid as heretofore: And whereas, with the approbation of the President of the United States, purchases were made by the New York Indians from the Menomonie and Winnebago Indians, of certain lands at Green Bay in the Territory of Wisconsin, which after much difficulty and contention with those Indians concerning the extent of that purchase, the whole subject was finally settled by a treaty between the United States and the Menomonie Indians, concluded in February, 1831, to which the New York Indians gave their assent on the 17th day of October, 1832: And whereas, by the provisions of that treaty, five hundred thousand acres of land are secured to the New York Indians of the Six Nations and the St. Regis tribe, as a future home, on condition that they all remove to the same, within three years, or such reasonable time as the President should prescribe. And whereas, the President is satisfied that various considerations have prevented those still residing in New York from removing to Green Bay, and among other reasons, that many who were in favor of emigration, preferred to remove at once to the Indian Territory,

which they were fully persuaded was the only permanent and peaceable home for all the Indians. And they therefore applied to the President to take their Green Bay lands, and provide them a new home among their brethren in the Indian Territory. And whereas, the President being anxious to promote the peace, prosperity and happiness of his red children, and being determined to carry out the humane policy of the Government in removing the Indians from the east to the west of the Mississippi, within the Indian Territory, by bringing them to see and feel, by his justice and liberality, that it is their true policy and for their interest to do so without delay :

Therefore, taking into consideration the foregoing premises, the following articles of a treaty are entered into between the United States of America and the several tribes of the New York Indians, the names of whose chiefs, head men and warriors are hereto subscribed, and those who may hereafter give their assent to this treaty in writing, within such time as the President shall appoint.

General Provisions.

Article 1. The several tribes of New York Indians, the names of whose chiefs, head men, warriors and representatives are hereunto annexed, in consideration of the premises above recited, and the covenants hereinafter contained, to be performed on the part of the United States, hereby cede and relinquish to the United States all their right, title and interest to the lands secured to them at Green Bay by the Menomonie treaty of 1831, excepting the following tract, on which a part of the New York Indians now reside : beginning at the southwesterly corner of the French grants at Green Bay, and running thence southwardly to a point on a line to be run from the Little Cocaclin, parallel to a line of the French grants and six miles from Fox river; from thence on said parallel line, northwardly six miles; from thence eastwardly to a point on the northeast line of the Indian lands, and being at right angles to the same.

Article 2. In consideration of the above cession and relinquishment, on the part of the tribes of the New York Indians, and in order to manifest the deep interest of the United States in the future peace and prosperity of the New York Indians, the United States agree to set apart the following tract of country, situated directly west of the State of Missouri, as a permanent home for all the New York Indians, now residing in the State of New York, or in Wisconsin, or elsewhere in the United States, who have no permanent homes, which said country is described as follows, to wit : Beginning on the west line of the State of Missouri, at the northeast corner of the Cherokee tract, and running thence north along the west line of the State of Missouri twenty-seven miles to the southerly line of the Miami lands ; thence west so far as shall be necessary, by running a line at right angles, and parallel to the west line aforesaid, to the Osage lands, and thence easterly along the Osage and Cherokee lands

to the place of beginning to include one million eight hundred and twenty-four thousand acres of land, being three hundred and twenty acres for each soul of said Indians as their numbers are at present computed. To have and to hold the same in fee-simple to the said tribes or nations of Indians, by patent from the President of the United States, issued in conformity with the provisions of the third section of the act, entitled "An act to provide for an exchange of lands, with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi," approved on the 28th day of May, 1830, with full power and authority in the said Indians to divide said lands among the different tribes, nations or bands in severalty, with the right to sell and convey to and from each other, under such laws and regulations as may be adopted by the respective tribes, acting by themselves, or by a general council of the said New York Indians, acting for all the tribes collectively. It is understood and agreed that the above-described country is intended as a future home for the following tribes, to wit: The Senecas, Onondagas, Cayugas, Tuscaroras, Oneidas, St. Regis, Stockbridges, Munsees, and Brothertowns residing in the State of New York, and the same is to be divided equally among them according to their respective numbers, as mentioned in a schedule hereunto annexed.

Article 3. It is further agreed that such of the tribes of the New York Indians as do not accept and agree to remove to the country set apart for their new homes within five years, or such other time as the President may, from time to time, appoint, shall forfeit all interest in the lands so set apart, to the United States.

Article 4. Perpetual peace and friendship shall exist between the United States and the New York Indians; and the United States hereby guaranty to protect and defend them in the peaceable possession and enjoyment of their new homes, and hereby secure to them, in said country, the right to establish their own form of government, appoint their own officers, and administer their own laws; subject, however, to the legislation of the Congress of the United States, regulating trade and intercourse with the Indians. The lands secured to them by patent under this treaty shall never be included in any State or Territory of this Union. The said Indians shall also be entitled, in all respects, to the same political and civil rights and privileges, that are granted and secured by the United States to any of the several tribes of emigrant Indians settled in the Indian Territory.

Article 5. The Oneidas are to have their lands in the Indian Territory, in the tract set apart for the New York Indians, adjoining the Osage tract, and that hereinafter set apart for the Senecas; and the same shall be so laid off as to secure them a sufficient quantity of timber for their use. Those tribes, whose lands are not specially designated in this treaty, are to have such as shall be set apart by the President.

Article 6. It is further agreed that the United States will pay to those who remove west, at their new homes, all such annuities, as

hall properly belong to them. The schedules hereunto annexed hall be deemed and taken as a part of this treaty.

Article 7. It is expressly understood and agreed that this treaty must be approved by the President and ratified and confirmed by the Senate of the United States, before it shall be binding upon the parties to it. It is further expressly understood and agreed that the rejection, by the President and Senate, of the provisions thereof, applicable to one tribe or distinct branch of a tribe, shall not be construed to invalidate as to others, but as to them it shall be binding, and remain in full force and effect.

Article 8. It is stipulated and agreed that the accounts of the commissioner, and expenses incurred by him in holding a council with the New York Indians, and concluding treaties at Green Bay and Duck Creek, in Wisconsin, and in the State of New York, in 1836, and those for the exploring party of the New York Indians, in 1837, and also the expenses of the present treaty, shall be allowed and settled according to former precedents.

Special Provisions for the St. Regis.

Article 9. It is agreed with the American party of the St. Regis Indians, that the United States will pay to the said tribe, on their removal west, or at such time as the President shall appoint, the sum of five thousand dollars, as a remuneration for moneys laid out by the said tribe, and for services rendered by their chiefs and agents in securing the title to the Green Bay lands, and in removal to the same, the same to be apportioned out to the several claimants by the chiefs of the said party and a United States commissioner, as may be deemed by them equitable and just. It is further agreed, that the following reservation of land shall be made to the Rev. Eleazer Williams, of said tribe, which he claims in his own right, and in that of his wife, which he is to hold in fee-simple, by patent from the President, with full power and authority to sell and dispose of the same, to wit: beginning at a point in the west bank of Fox river, thirteen chains above the Old Milldam at the rapids of the Little Kockalin; thence north fifty-two degrees and thirty minutes west, two hundred and forty chains; thence north thirty-seven degrees and thirty minutes east, two hundred chains; thence south fifty-two degrees and thirty minutes east, two hundred and forty chains to the bank of Fox river; thence up along the bank of Fox river to the place of beginning.

Special Provisions for the Senecas.

Article 10. It is agreed with the Senecas that they shall have for themselves and their friends, the Cayugas and Onondagas, residing among them, the easterly part of the tract set apart for the New York Indians and to extend so far west, as to include one half section (three hundred and twenty acres) of land for each soul of the

Senecas, Cayugas and Onondagas, residing among them; and if, on removing west, they find there is not sufficient timber on this tract for their use, then the President shall add thereto timber land sufficient for their accommodation, and they agree to remove; to remove from the State of New York to their new homes within five years, and to continue to reside there. And whereas at the making of this treaty, Thomas L. Ogden and Joseph Fellows the assignees of the State of Massachusetts, have purchased of the Seneca nation of Indians, in the presence and with the approbation of the United States commissioner, appointed by the United States to hold said treaty or convention, all the right, title, interest, and claim of the said Seneca nation, to certain lands, by a deed of conveyance a duplicate of which is hereunto annexed; and whereas the consideration money mentioned in said deed, amounting to two hundred and two thousand dollars, belongs to the Seneca nation, and the said nation agrees that the said sum of money shall be paid to the United States, and the United States agree to receive the same, to be disposed of as follows: the sum of one hundred thousand dollars is to be invested by the President of the United States in safe stocks, for their use, the income of which is to be paid to them at their new homes, annually, and the balance, being the sum of one hundred and two thousand dollars, is to be paid to the owners of the improvements on the lands so deeded, according to an appraisement of said improvements and a distribution and award of said sum of money among the owners of said improvements, to be made by appraisers, hereafter to be appointed by the Seneca nation, in the presence of a United States commissioner, hereafter to be appointed, to be paid by the United States to the individuals who are entitled to the same, according to said appraisal and award, on their severally relinquishing their respective possessions to the said Ogden and Fellows.

Special Provisions for the Cayugas.

Article 11. The United States will set apart for the Cayugas, on their removing to their new homes at the West, two thousand dollars, and will invest the same in some safe stocks, the income of which shall be paid them annually, at their new homes. The United States further agree to pay to the said nation, on their removal west, two thousand five hundred dollars, to be disposed as the chiefs shall deem just and equitable.

Special Provisions for the Onondagas Residing on the Seneca Reservations.

Article 12. The United States agree to set apart for the Onondagas, residing on the Seneca reservations, two thousand five hundred dollars, on their removing West, and to invest the same in safe stocks, the income of which shall be paid to them annually at their new homes. And the United States further agree to pay to the said

Onondagas, on their removal to their new homes in the West, two thousand dollars, to be disposed of as the chiefs shall deem equitable and just.

Special Provisions for the Oneidas Residing in the State of New York.

Article 13. The United States will pay the sum of four thousand dollars, to be paid to Baptista Powlis, and the chiefs of the first Christian party residing at Oneida, and the sum of two thousand dollars shall be paid to William Day, and the chiefs of the Orchard party residing there, for expenses incurred and services rendered in securing the Green Bay country and the settlement of a portion thereof; and they hereby agree to remove to their new homes in the Indian Territory, as soon as they can make satisfactory arrangements with the governor of the State of New York for the purchase of their lands at Oneida.

Special Provisions for the Tuscaroras.

Article 14. The Tuscarora nation agree to accept the country set apart for them in the Indian Territory, and to remove there within five years, and to continue to reside there. It is further agreed that the Tuscaroras shall have their lands in the Indian country, at the forks of the Neasha river, which shall be so laid off as to secure a sufficient quantity of timber for the accommodation of the nation. But if on examination they are not satisfied with this location, they are to have their lands at such place as the President of the United States shall designate. The United States will pay to the Tuscarora nation, on their settling at the West, three thousand dollars, to be disposed of as the chiefs shall deem most equitable and just. Whereas the said nation owns in fee-simple, five thousand acres of land, lying in Niagara county in the State of New York, which was conveyed to the said nation by Henry Dearborn and they wish to sell and convey the same before they remove West · Now therefore, in order to have the same done in a legal and proper way, they hereby convey the same to the United States and to be held in trust for them, and they authorize the president to sell and convey the same, and the money which shall be received for the said lands, exclusive of the improvements, the President shall invest in safe stocks for their benefit, the income from which shall be paid to the nation, at their new homes annually; and the money which shall be received for improvements on said lands shall be paid to the owners of the improvements when the lands are sold. The President shall cause the said lands to be surveyed, and the improvements shall be appraised by such persons as the nation shall appoint; and said lands shall also be appraised, and shall not be sold at a less price than the appraisal, without the consent of James Gusick, William Mountpleasant, and William Chew, or the survivor or survivors of them; and the expenses incurred by the United States in relation to this trust are to be deducted from the moneys received before investment.

And whereas, at the making of this treaty, Thomas L. Ogden and Joseph Fellows, the assignees of the State of Massachusetts, have purchased of the Tuscarora nation of Indians, in the presence and with the approbation of the commissioner appointed on the part of the United States to hold said treaty or convention, all the right, title, interest and claim of the Tuscarora nation to certain lands, by a deed of conveyance, a duplicate of which is hereunto annexed: And whereas, the consideration money for said lands has been secured to the said nation to their satisfaction, by Thomas L. Ogden and Joseph Fellows; therefore the United States hereby assent to the said sale and conveyance and sanction the same.

Article 15. The United States hereby agree that they will appropriate the sum of four hundred thousand dollars, to be applied from time to time, under the direction of the President of the United States, in such proportions, as may be most for the interest of the said Indians, parties to this treaty, for the following purposes, to wit: To aid them in removing to their homes, and supporting themselves the first year after their removal; to encourage and assist them in education, and in being taught to cultivate their lands; in erecting mills and other necessary houses; in purchasing domestic animals, and farming utensils and acquiring a knowledge of the mechanic arts.

In testimony whereof, the commissioner and the chiefs, head men, and people, whose names are hereto annexed, being duly authorized, have hereunto set their hands, and affixed their respective seals, at the time and place above mentioned.

[Here follow signatures.]

SCHEDULE A.

Census of the New York Indians as Taken in 1837—*Number Residing on the Seneca Reservations.*

Senecas	2,309
Onondagas	194
Cayugas	130
	2,633
Onondagas, at Onondaga	300
Tuscaroras	273
St. Regis, in New York	350
Oneidas, at Green Bay	600
Oneidas, in New York	620
Stockbridges	217
Munsees	132
Brothertowns	360

The above was made before the execution of the treaty.

R. H. GILLET,
Commissioner.

SCHEDULE B.

The following is the disposition agreed to be made of the sum of three thousand dollars provided in this treaty for the Tuscaroras, by the chiefs, and assented to by the commissioner, and is to form a part of the treaty:

To Jonothan Printess, ninety-three dollars.
To William Chew, one hundred and fifteen dollars.
To John Patterson, forty-six dollars.
To William Mountpleasant, one hundred and seventy-one dollars.
To James Cusick, one hundred and twenty-five dollars.
To David Peter, fifty dollars.
The rest and residue thereof is to be paid to the nation.
The above was agreed to before the execution of the treaty.

R. H. GILLET,
Commissioner.

SCHEDULE C.

Schedule Applicable to the Onondagas and Cayugas Residing on the Seneca Reservations.

It is agreed that the following disposition shall be made of the amount set apart to be divided by the chiefs of those nations, in the preceding parts of this treaty, anything therein to the contrary notwithstanding:

To William King, one thousand five hundred dollars.
To Joseph Isaacs, seven hundred dollars.
To Jack Wheelbarrow, three hundred dollars.
To Silversmith, one thousand dollars.
To William Jacket, five hundred dollars.
To Buton George, five hundred dollars.
The above was agreed to before the treaty was finally executed.

R. H. GILLET,
Commissioner.

At a treaty held under the authority of the United States of America, at Buffalo Creek in the county of Erie, and State of New York, between the chiefs and head men of the Seneca nation of Indians, duly assembled in council, and representing and acting for the said nation, on the one part, and Thomas Ludlow Ogden of the city of New York and Joseph Fellows of Geneva, in the county of Ontario, on the other part, concerning the purchase of the right and claim of the said Indians in and to the lands within the State of New York remaining in their occupation: Ransom H. Gillet, Esquire, a commissioner appointed by the President of the United States to attend and hold the said treaty, and also Josiah Trowbridge, Esquire, the superintendent on behalf of the Commonwealth of Massa-

chusetts, being severally present at the said treaty, the said chiefs and head men, on behalf of the Seneca nation did agree to sell and release to the said Thomas Ludlow Ogden and Joseph Fellows and they the said Thomas Ludlow Ogden and Joseph Fellows did agree to purchase all the right, title and claim of the said Seneca nation of, in and to the several tracts, pieces, or parcels of land mentioned, and described in the instrument of writing next hereinafter set forth, and at the price or sum therein specified, as the consideration or purchase-money for such sale and release; which instrument being read and explained to the said parties and mutually agreed to, was signed and sealed by the said contracting parties, and is in the words following:

This indenture, made this fifteenth day of January in the year of our Lord one thousand eight hundred and thirty-eight, between the chiefs and head men of the Seneca nation of Indians, duly assembled in council, and acting for and on behalf of the said Seneca nation, of the first part, and Thomas Ludlow Ogden, of the city of New York, and Joseph Fellows of Geneva, in the county of Ontario, of the second part witnesseth: That the said chiefs and head men of the Seneca nation of Indians, in consideration of the sum of two hundred and two thousand dollars to them in hand paid by the said Thomas Ludlow Ogden and Joseph Fellows, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, and to their heirs and assigns, all that certain tract or parcel of land, situate, lying and being in the county of Erie and State of New York commonly called and known by the name of Buffalo Creek reservation, containing, by estimation forty-nine thousand nine hundred and twenty acres be the contents thereof more or less. Also, all that certain other tract or parcel of land, situate, lying and being in the counties of Erie, Chatauque, and Cattaraugus in said State commonly called and known by the name of Cattaraugus reservation, containing by estimation twenty-one thousand six hundred and eighty acres, be the contents thereof more or less. Also, all that certain other tract or parcel of land situate, lying, and being in the said county of Cattaraugus, in said State, commonly called and known by the name of the Allegany reservation, containing by estimation thirty thousand four hundred and sixty-nine acres, be the contents more or less. And also, all that certain other tract or parcel of land, situate, lying and being partly in said county of Erie and partly in the county of Genesee, in said State, commonly called and known by the name of the Tonawando reservation, and containing by estimation twelve thousand, eight hundred acres, be the same more or less; as the said several tracts of land have been heretofore reserved and are held and occupied by the said Seneca nation of Indians, or by individuals thereof, together with all and singular the rights, privileges, hereditaments and appurtenances to each and

every of the said tracts or parcels of land belonging or appertaining; and all the estate, right, title, interest, claim, and demand of the said party of the first part, and of the said Seneca nation of Indians, of, in, and to the same, and to each and every part and parcel thereof; to have and to hold all and singular the above described and released premises unto the said Thomas Ludlow Ogden and Joseph Fellows, their heirs and assigns, to their proper use and behoof forever, as joint tenants and not as tenants in common.

In witness whereof, the parties to these presents have hereunto and to three other instruments of the same tenor and date one to remain with the United States, one to remain with the State of Massachusetts, one to remain with the Seneca nation of Indians and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows, interchangeably set their hands and seals the day and year first above written.

[Here follow signatures.]

Signed, sealed and delivered in presence of—

[Here follow signatures.]

At the beforementioned treaty, held in my presence as superintendent on the part of the Commonwealth of Massachusetts, and this day concluded, the foregoing instrument of writing was agreed to by the contracting parties therein named, and was in my presence executed by them, and being approved by me, I do hereby certify and declare such my approbation thereof.

Witness my hand and seal, at Buffalo Creek, this 15th day of January in the year 1838.

JOSIAH TROWBRIDGE.

I have attended a treaty of the Seneca nation of Indians, held at Buffalo Creek, in the county of Erie, in the State of New York, on the 15th day of January in the year of our Lord one thousand eight hundred and thirty-eight when the within instrument was duly executed, in my presence, by the chiefs of the Seneca nations, being fairly and properly understood by them. I do, therefore, certify and approve the same.

R. H. GILLET,
Commissioner.

At a treaty held under and by the authority of the United States of America, at Buffalo Creek, in the county of Erie, and State of New York, between the sachems, chiefs and warriors of the Tuscarora nation of Indians, duly assembled in council and representing and acting for the said nation, on the one part and Thomas Ludlow Ogden of the city of New York and Joseph Fellows of Geneva in the county of Ontario on the other part, concerning the purchase

of the right and claim of the said nation of Indians in and to the lands within the State of New York, remaining in their occupation: Ransom H. Gillet, Esquire, a commissioner appointed by the President of the United States to attend and hold the said treaty, and also Josiah Trowbridge, Esquire, the superintendent on behalf of the Commonwealth of Massachusetts, being severally present at the said treaty, the said sachems, chiefs and warriors, on behalf of the said Tuscarora nation, did agree to sell and release to the said Thomas Ludlow Ogden and Joseph Fellows, and they, the said Thomas Ludlow Ogden and Joseph Fellows did agree to purchase all the right, title and claim of the said Tuscarora nation of, in and to the tract, piece or parcel of land mentioned and described in the instrument of writing next hereinafter set forth, and at the price, or sum therein specified, as the consideration, or purchase-money for such sale and release; which instrument being read and explained to the said parties, and mutually agreed to was signed and sealed by the said contracting parties, and is in the words following:

This indenture, made this fifteenth day of January in the year of our Lord one thousand eight hundred and thirty-eight, between the sachems, chiefs and warriors of the Tuscarora nation of Indians, duly assembled in council, and acting for and on behalf of the said Tuscarora nation of the first part, and Thomas Ludlow Ogden of the city of New York, and Joseph Fellows of Geneva, in the county of Ontario, of the second part witnesseth: That the said sachems, chiefs and warriors of the Tuscarora nation, in consideration of the sum of nine thousand six hundred dollars to them in hand paid by the said Thomas Ludlow Ogden and Joseph Fellows, the receipt whereof is hereby acknowledged, have granted, bargained, sold, released and confirmed, and by these presents do grant, bargain, sell, release and confirm to the said Thomas Ludlow Ogden and Joseph Fellows, and to their heirs and assigns, all that tract or parcel of land, situate, lying and being in the county of Niagara and State of New York, commonly called and known by the name of the Tuscarora reservation or Seneca grant, containing nineteen hundred and twenty acres, be the same more or less, being the lands in their occupancy, and not included in the land conveyed to them by Henry Dearborn, together with all and singular the rights, the rights, privileges hereditaments, and appurtenances to the said tract or parcel of land belonging, or appertaining, and all the estate, right, title, interest, claim and demand of the said party of the first part and of the said Tuscarora nation of Indians of, in and to the same, and to every part and parcel thereof: To have and to hold all and singular the above described and released premises unto the said Thomas Ludlow Ogden and Joseph Fellows, and their heirs and assigns, to their proper use and behoof forever, as joint tenants and not as tenants in common.

In witness whereof, the parties to these presents have hereunto and to three other instruments of the same tenor and date, one to

remain with the United States, one to remain with the State of Massachusetts, one to remain with the Tuscarora nation of Indians and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows, interchangeably set their hands and seals, the day and year first above written.

[Here follow signatures.]

Sealed and delivered in the presence of—

[Here follow signatures.]

At the above-mentioned treaty, held in my presence, as superintendent on the part of the Commonwealth of Massachusetts, and this day concluded, the foregoing instrument was agreed to by the contracting parties therein named, and was in my presence executed by them; and being approved by me, I do hereby certify and declare such my approbation thereof.

Witness my hand and seal, at Buffalo Creek, this 15th day of January, in the year 1838.

J. TROWBRIDGE,
Superintendent.

I have attended a treaty of the Tuscarora nation of Indians, held at Buffalo Creek, in the county of Erie in the State of New York on the fifteenth day of January in the year of our Lord one thousand eight hundred and thirty-eight, when the within instrument was duly executed in my presence, by the sachems, chiefs, and warriors of the said nation, being fairly and properly understood and transacted by all the parties of Indians concerned, and declared to be done to their full satisfaction. I do therefore certify and approve the same.

R. H. GILLET,
Commissioner.

Supplemental Article

To the treaty concluded at Buffalo Creek, in the State of New York, on the 15th of January, 1838, concluded between Ransom H. Gillet, commissioner on the part of the United States, and chiefs and head men of the St. Regis Indians, concluded on the 13th day of February, 1838.

Supplemental article to the treaty concluded at Buffalo Creek, in the State of New York, dated January 15, 1838.

The undersigned chiefs and head men of the St. Regis Indians residing in the State of New York having heard a copy of said treaty read by Ransom H. Gillet, the commissioner who concluded that treaty on the part of the United States, and he having fully

and publicly explained the same, and believing the provisions o
the said treaty to be very liberal on the part of the United State
and calculated to be highly beneficial to the New York Indians, in
cluding the St. Regis, who are embraced in its provisions do hereby
assent to every part of the said treaty and approve the same. And
it is further agreed, that any of the St. Regis Indians, who wish t
do so, shall be at liberty to remove to the said country at any time
hereafter within the time specified in this treaty, but under it th
Government shall not compel them to remove. The United State
will, within one year after the ratification of this treaty, pay over t
the American party of said Indians one thousand dollars, part o
the sum of five thousand dollars mentioned in the special provision
for the St. Regis Indians, anything in the article contained to th
contrary notwithstanding.

Done at the council-house at St. Regis, this thirteenth day o
February in the year of our Lord one thousand eight hundred and
thirty-eight.

Witness our hands and seals.

[Here follow signatures.]

The foregoing was executed in our presence:

[Here follow signatures.]

We the undersigned chiefs of the Seneca tribe of New York In
dians, residing in the State of New York, do hereby give our fre
and voluntary assent to the foregoing treaty as amended by th
resolution of the Senate of the United States on the eleventh day
of June, 1838, and to our contract therewith, the same having been
submitted to us by Ransom H. Gillet, a commissioner on the par
of the United States, and fully and fairly explained by him, to ou
said tribe, in council assembled.

Dated Buffalo Creek September 28, 1838.

[Here follow signatures.]

The above signatures were freely and voluntarily given after th
treaty and amendments had been fully and fairly explained in ope
council.

R. H. GILLET,
Commissioner.

Witness:

[Here follow signatures.]

We the undersigned chiefs of the Oneida tribe of New York In
dians do hereby give our free and voluntary assent to the foregoing
treaty as amended by the resolution of the Senate of the United
States on the eleventh day of June 1838, the same having been sub

mitted to us by Ransom H. Gillet, a commissioner on the part of the United States and fully and fairly explained by him to our said tribe in council assembled.

Dated August 9th, 1838 at the Oneida council-house.

—— ——.

Executed in the presence of—

TIMOTHY JENKINS.

The above assent was voluntarily, freely and fairly given in my presence, after being fully and fairly explained by me.

R. H. GILLET,
Commissioner, Etc.

We the undersigned sachems chiefs and head men of the Tuscarora nation of Indians residing in the State of New York, do hereby give our free and voluntary assent to the foregoing treaty as amended by the resolution of the Senate of the United States on the eleventh day of June 1838, and to our contract connected therewith, the same having been submitted to us by Ransom H. Gillet, a commissioner on the part of the United States, and fully and fairly explained by him to our said tribe in council assembled.

Dated August 14th, 1838.

[Here follow signatures.]

The above assent was freely and voluntarily given after being fully and fairly explained by me.

R. H. GILLET,
Commissioner.

We the undersigned chiefs and head men of the tribe of Cayuga Indians residing in the State of New York do hereby give our free and voluntary assent to the foregoing treaty as amended by the resolution of the Senate of the United States on the eleventh day of June 1838, the same having been submitted to us by Ransom H. Gillet, a commissioner on the part of the United States, and fully and fairly explained by him to our said tribe in council assembled.

Dated August 30th, 1838.

[Here follow signatures.]

We the undersigned sachems, chiefs and head men of the American party of the St. Regis Indians residing in the State of New York, do hereby give our free and voluntary assent to the foregoing treaty as amended by the Senate of the United States on the eleventh day of June 1838, the same having been submitted to us by Ransom H. Gillet a commissioner on the part of the United States and fully and fairly explained by him to our said tribe in council assembled.

The St. Regis Indians shall not be compelled to remove under the treaty or amendments.

Dated October 9th, 1838.

[Here follow signatures.]

The foregoing assent was signed in our presence:

R. H. GILLET,
Commissioner.

We the undersigned, chiefs, head men and warriors of the Onondaga tribe of Indians residing on the Seneca reservations in the State of New York, do hereby give our free and voluntary assent to the foregoing treaty as amended by the Senate of the United States on the eleventh day of June, 1838, the same having been submitted to us by Ransom H. Gillet, a commissioner on the part of the United States and fully and fairly explained by him to our said tribe in council assembled.

Dated August 31st, 1838.

[Here follow signatures.]

The above signatures were freely given in our presence:

[Here follow signatures.]

Seneca Treaty, May 20, 1842 (7th Stats., 586).

Made and Concluded at Buffalo Creek, in the State of New York, on the Twentieth Day of May, in the Year One Thousand Eight Hundred and Forty-two, Between the United States of America, Acting Herein by Ambrose Spencer, Their Commissioner, Thereto Duly Authorized, on the One Part, and the Chiefs, Head Men, and Warriors of the Seneca Nation of Indians, Duly Assembled in Council, on the Other Part.

Whereas a treaty was heretofore concluded, and made between the said United States, and the chiefs, head men, and warriors of the several tribes of New York Indians, dated the fifteenth day of January in the year one thousand eight hundred and thirty-eight, which treaty having been afterwards amended, was proclaimed by the President of the United States, on the fourth of April one thousand eight hundred and forty, to have been duly ratified.

And whereas on the day of making this treaty, and bearing even date herewith, a certain indenture was made executed and concluded by and between the said Seneca nation of Indians, and Thomas L. Ogden, and Joseph Fellows, assignees under the State of Massachusetts, in the presence and with the approbation of a commissioner appointed by the United States, and in the presence and with the approbation of Samuel Hoare, a superintendent on the part of the Commonwealth of Massachusetts, which indenture is in the words and figures following, to wit:

"This indenture made and concluded between Thomas Ludlow Ogden of the city of New York, and Joseph Fellows of Geneva, in the county of Ontario of the one part, and the chiefs and head men of the Seneca nation of Indians, on the other part at a council duly assembled and held at Buffalo Creek, in the State of New York on the twentieth day of May in the year one thousand eight hundred and forty-two in the presence of Samuel Hoare, the superintendent thereto authorized and appointed by and on the part of the Commonwealth of Massachusetts, and of Ambrose Spencer a commissioner thereto duly appointed and authorized on the part of the United States.

"Whereas at a council held at Buffalo Creek on the fifteenth day of January in the year one thousand eight hundred and thirty-eight, an indenture of that date was made and executed by and between the parties to this agreement, whereby the chiefs and head men of the Seneca nation of Indians for the consideration of two hundred and two thousand dollars did grant, bargain, release and confirm unto the said Thomas Ludlow Ogden and Joseph Fellows, all those four several tracts of land, situate within the State of New York then and yet occupied by the said nation, or the people thereof,

severally described in the said indenture, as the Buffalo Creek reservation, containing by estimation forty-nine thousand nine hundred and twenty acres of land, the Cattaraugus reservation containing by estimation twenty-one thousand six hundred and eighty acres of land, the Allegany reservation, containing by estimation thirty thousand four hundred and sixty-nine acres of land, and the Tonnewanda reservation containing by estimation twelve thousand eight hundred acres of land; a duplicate of which indenture was annexed to a treaty of the same date made between the United States of America and the chiefs, head men, and warriors of the several tribes of the New York Indians assembled in council; which treaty was amended and proclaimed by the President of the United States on the fourth of April one thousand eight hundred and forty, as having been duly ratified; as by the said indenture, treaty and proclamation more fully appear.

"And whereas divers questions and differences having arisen between the chiefs and head men of the Seneca nation of Indians or some of them, and the said Thomas Ludlow Ogden and Joseph Fellows in relation to the said indenture, and the rights of the parties thereto, and the provisions contained in the said indenture being still unexecuted, the said parties have mutually agreed to settle, compromise and finally terminate all such questions and differences on the terms and conditions hereinafter specified.

"Now therefore it is hereby mutually declared, and agreed, by and between the said parties as follows

"Article first. The said Thomas Ludlow Ogden, and Joseph Fellows in consideration of the release and agreements hereinafter contained on the part of the said Seneca nation do on their part consent, covenant and agree that they the said nation (the said indenture notwithstanding) shall and may continue in the occupation and enjoyment of the whole of the said two several tracts of land, called the Cattaraugus reservation, and the Allegany reservation with the same right and title in all things, as they had and possessed therein immediately before the date of the said indenture, saving and reserving to the said Thomas Ludlow Ogden, and Joseph Fellows the right of pre-emption, and all other the right and title which they then had or held in or to the said tracts of land.

"Article second. The chiefs and head men of the Seneca nation of Indians in consideration of the foregoing, and of the agreement next hereinafter contained, do on their part grant, release and confirm unto the said Thomas Ludlow Ogden, and Joseph Fellows, and to their heirs and assigns, in joint tenancy, the whole of the said two tracts of land severally called the Buffalo Creek reservation, and the Tonnewanda reservation, and all the right and interest therein of the said nation.

"Article third. It is mutually agreed, between the parties hereto that in lieu of the sum expressed in the said indenture, as the consideration of the sale, and release of the said four tracts of land, there shall be paid to the said nation a just consideration sum, for

the release of the two tracts, hereby confirmed to the said Ogden and Fellows, to be estimated and ascertained as follows

"The present value of the Indian title to the whole of the said four tracts of land including the improvements thereon, shall for all the purposes of this present compact, be deemed and taken to be two hundred and two thousand dollars, of which sum one hundred thousand dollars shall be deemed to be the value of such title in and to all the lands within the said four tracts exclusive of the improvements thereon and one hundred and two thousand dollars to be the value of all the improvements within the said four tracts, and of the said sum of one hundred thousand dollars the said Ogden and Fellows shall pay to the Seneca nation such proportion as the value of all the lands within the said two tracts called the Buffalo Creek, and Tonnewanda reservations shall bear to the value of all the lands within all the said four tracts—and of the said sum of one hundred and two thousand dollars, the said Ogden and Fellows shall pay such proportion as the value of the improvements on the same two tracts, shall bear to the value of the improvements on all the said four tracts.

"Article fourth. The amount of the consideration monies to be paid in pursuance of the last preceding article shall be determined by the judgment and award of arbitrators, one of whom shall be named by the Secretary of the War Department of the United States, and one by the said Ogden and Fellows, which arbitrators in order to such judgment and award, and to the performance of the other duties hereby imposed on them, may employ suitable surveyors to explore examine and report on the value of the said lands and improvements, and also to ascertain the contents of each of the said four tracts, which contents shall govern the arbitrators as to quantity in determining the amount of the said consideration money.

"The same arbitrators shall also award and determine the amount to be paid to each individual Indian out of the sum which on the principles above stated, they shall ascertain and award to be the proportionate value of the improvements on the said two tracts called the Buffalo Creek reservation and the Tonnewanda reservation, and in case the said arbitrators shall disagree as to any of the matters hereby submitted to them, they may choose an umpire whose decision thereon shall be final and conclusive, and the said arbitrators shall make a report in writing of their proceedings in duplicate, such reports to be acknowledged or proved according to the laws of the State of New York, in order to their being recorded, one of such reports to be filed in the office of the Secretary of the Department of War, and the other thereof to be delivered to the said Thomas L. Ogden and Joseph Fellows.

"Article fifth. It is agreed, that the possession of the two parts hereby confirmed, to the said Ogden and Fellows, shall be surrendered and delivered up to them, as follows, viz: The forest or unimproved lands on the said tracts, within one month after the

report of the said arbitrators shall be filed, in the office of the Department of War, and the improved lands within the two years after the said report shall have been so filed; Provided always that the amount to be so ascertained and awarded, as the proportionate value of the said improvements shall on the surrender thereof be paid to the President of the United States, to be distributed among the owners of the said improvements, according to the determination and award of the said arbitrators, in this behalf, and provided further that the consideration for the release and conveyance of the said lands shall at the time of the surrender thereof be paid or secured to the satisfaction of the said Secretary of the War Department, the income of which is to be paid to the said Seneca Indians annually.

"But any Indian having improvements may surrender the same, and the land occupied by him and his family at any time prior to the expiration of the said two years, upon the amount awarded to him for such improvements being paid to the President of the United States, or any agent designated by him for that purpose by the said Ogden and Fellows, which amount shall be paid over to the Indian entitled to the same, under the direction of the War Department.

"Article sixth. It is hereby agreed and declared, to be the understanding and intent of the parties hereto that such of the said Seneca nation, as shall remove from the State of New York, under the provisions of any treaty, made or to be made, between the United States and the said Indians, shall be entitled in proportion to their relative numbers to the funds of the Seneca nation, and that the interest and income of such their share and proportion of the said funds, including the consideration money to be paid to the said nation in pursuance of this Indenture, and of all annuities belonging to the said nation shall be paid to the said Indians so removing at their new homes, and whenever the said tracts called the Allegany and the Cattaraugus reservations, or any part thereof shall be sold and conveyed by the Indians remaining in the State of New York, the Indians so removing shall be entitled to share in the proceeds of said sales in the like proportion. And it is further agreed and declared, that such Indians owning improvements in the Cattaraugus and Allegany tracts as may so remove from the State of New York, shall be entitled on such removal, and on surrendering their improvements to the Seneca nation, for the benefit of the nation to receive the like compensation for the same according to their relative values as in the third and fourth articles of this treaty are stipulated to be paid, to the owners of improvements in the Buffalo Creek and Tonnewanda tracts on surrendering their improvements; which compensations may be advanced by the President of the United States, out of any funds in the hands of the Government of the United States, belonging to the Seneca nation, and the value of these improvements shall be ascertained and

reported by the arbitrators to be appointed in pursuance of the fourth article.

"Article seventh. This Indenture is to be deemed to be in lieu of, and as a substitute for the above-recited Indenture made and dated the fifteenth day of January, one thousand eight hundred and thirty-eight, so far as the provisions of the two instruments may be inconsistent, or contradictory, and the said Indenture so far as the same may be inconsistent with the provisions of this compact, is to be regarded and is hereby declared to be rescinded and released.

"Article eighth. All the expenses attending the execution of this indenture and compact including those of the arbitration and surveys hereinbefore referred to, and also those of holding the treaty now in negotiation between the United States and the said Seneca nation, except so far as may be provided for by the United States, shall be advanced and paid by the said Ogden and Fellows.

"Article ninth. The parties to this compact mutually agree to solicit the influence of the Government of the United States to protect such of the lands of the Seneca Indians, within the State of New York, as may from time to time remain in their possession from all taxes and assessments for roads, highways, or any other purpose until such lands shall be sold and conveyed by the said Indians, and the possession thereof shall have been relinquished by them.

"In witness whereof the parties to these presents have hereunto, and to three other instruments of the same tenor and date, one to remain with the United States, one to remain with the State of Massachusetts, one to remain with the Seneca nation of Indians and one to remain with the said Thomas Ludlow Ogden and Joseph Fellows, interchangeably set their hands and seals the day and year first above written."

Therefore taking into consideration the premises it is agreed and stipulated by and between the United States of America and the Seneca nation of Indians, as follows, to wit:

First. The United States of America consent to the several articles and stipulations contained in the last recited Indenture between the said nation and the said Thomas Ludlow Ogden and Joseph Fellows, above set forth.

Second. The United States further consent and agree that any number of the said nation, who shall remove from the State of New York, under the provisions of the above-mentioned treaty proclaimed as aforesaid, on the fourth day of April one thousand eight hundred and forty shall be entitled in proportion to their relative numbers to all the benefits of the said treaty.

Third. The United States of America further consent and agree, that the tenth article of said treaty proclaimed as aforesaid on the fourth day of April one thousand eight hundred and forty, be deemed, and considered as modified, in conformity with the provisions of the indenture hereinabove set forth, so far as that the

United States will receive and pay the sum stipulated to be paid as the consideration money of the improvements therein specified, and will receive hold and apply the sum to be paid, or the securities to be given for the lands therein mentioned, as provided for in such indenture.

In testimony whereof the undersigned Ambrose Spencer commissioner on the part of the United States of America, and the undersigned chiefs and head men of the Seneca nation of Indians, have to two parts of this treaty, one thereof to remain with the United States, and the other thereof with the Seneca nation of Indians, set their hands and affixed their seals the day and year first above mentioned.

[Here follow signatures.]

52D CONGRESS, 1st Session. | SENATE. | MIS. DOC. No. 46.

IN THE SENATE OF THE UNITED STATES.

JANUARY 18, 1892.—Referred to the Committee on Appropriations and ordered to be printed.

Findings Filed by the Court of Claims in the Case of the New York Indians vs. The United States.

[The New York Indians, being those Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York, January 15, 1838, *vs.* The United States. Congressional case, No. 151.]

COURT OF CLAIMS, CLERK'S OFFICE,
WASHINGTON, *January* 16, 1892.

SIR: Pursuant to the order of the court I transmit herewith a certified copy of the findings filed by the court in the aforesaid cause, which case was referred to this court by the Committee on Indian Affairs, United States Senate, under the act of March 3, 1883.

I am, very respectfully, yours, etc.,

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.

Hon. LEVI P. MORTON,
President of the Senate of the United States.

[Court of Claims. Congressional case No. 151. The New York Indians, being those Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York, on the 15th day of January, 1838, *vs.* The United States.]

At a Court of Claims held in the city of Washington on the 11th day of January, A. D. 1892, the court filed the following findings of fact, to wit:

The claim or matter in the above-entitled case was transmitted to the court by the Committee on Indian Affairs of the Senate of the United States, the 21st day of June, 1884.

James B. Jenkins, Henry E. Davis, Guion Miller, Esqs. (with whom was George Barker, Esq.), appeared for claimants, and the Attorney General, by F. P. Dewees, Esq., his assistant and under his direction, appeared for the defense and protection of the interests of the United States.

The following is the letter transmitting the cause to this court:

UNITED STATES SENATE COMMITTEE ON CLAIMS,
June 21, 1884.

At a meeting of the Committee on Indian Affairs of the Senate of the United States the following order was made by that committee:

Ordered, That Senate bill (S. 467) to provide for a settlement with the Indians who were parties to the treaty concluded at Buffalo Creek, in the State of New York, on the 15th day of January, 1838, for the unexecuted stipulation of that treaty, together with the accompanying amendment intended to be proposed by Mr. Voorhees to the aforesaid bill, which bill and proposed amendment were referred to said committee at the first session of the Forty-eighth Congress, and which bill and proposed amendment are now pending before said committee, be transmitted (in accordance with the provisions of an act entitled "An act to afford assistance and relief to Congress and the executive departments in the investigation of claims and demands against the Government," approved March 3, 1883), to the Court of Claims of the United States, together with the vouchers, papers, proofs, and documents appertaining thereto, for the investigation and determination of the facts involved in said bill and said proposed amendment thereto.

J. R. MCCARTY,
Clerk to the United States Senate Committee on Indian Affairs.

All questions relative to the proposed amendment to the Senate bill mentioned in said letter were abandoned by counsel at the beginning of the argument, and it was stated that an agreement had been reached upon its subject-matter.

The case having been brought to a hearing on the 25th day of November, 1891, the court, upon the evidence and after considering the briefs and arguments of counsel on both sides, find the facts to be as follows:

I.

In 1784 the United States by treaty secured the Oneida and Tuscarora nations in the possession of the lands upon which they were settled, and fixed the boundaries of the lands of the Six Nations, it being agreed by the United States that the Six Nations should be secured in the peaceful possession of the lands they then inhabited east and north of the boundaries fixed.

The stipulations of this treaty were renewed and confirmed in 1789 when the boundary was again described in the same terms as in the treaty of 1784 and the Indians relinquished and ceded to the United States the lands west of the defined boundary. The Mohawks were not parties to the treaty of 1789.

In 1794 another treaty was concluded with the Six Nations guaranteeing peace and friendship perpetual between the parties acknowledging the lands reserved to the Oneida, Onondaga, and Cayuga nations in their treaty with the State of New York to be their prop-

erty, and engaging that the United States would never claim the same or disturb them or either of the Six Nations, nor their Indian friends residing thereon and united with them in the free use and enjoyment thereof, but the said lands should remain theirs until they chose to sell the same to the United States, who "have the right to purchase." The land of the Seneca nation is also described by metes and bounds in this treaty acknowledged as their property and confirmed as theirs until they chose to sell to the United States, who "have the right to purchase," and the United States having thus described and acknowledged the lands of the Oneidas, Onondagas, Cayugas, and Senecas, and engaged never to claim the same nor disturb the Six Nations in the free use and enjoyment thereof, the Six Nations upon their side engaged never to claim any other lands within the boundaries of the United States.

II.

The New York Indians in 1810 petitioned the President of the United States for leave to purchase reservations of their western brethren with the privilege of removing to and occupying the same. Thereupon, with the approbation of the President, land situated at Green Bay, Wisconsin, was purchased by the said New York Indians from the Menomonee and Winnebago tribes.

III.

In 1821 the Menomonee Indians ceded to the Stockbridge, Oneida, Tuscarora, St. Regis, and Munsee nations two large tracts of land in Wisconsin for a small money consideration. The title to one of those tracts was confirmed in the New York Indians by the President March 13, 1823.

IV.

Thereafter certain New York Indians belonging to the Oneida, St. Regis, Munsee, and Brothertown tribes removed to and took possession of the lands in Wisconsin. Subsequently questions of tenure and boundaries of the lands granted to the New York Indians were raised by the Menomonees, negotiations were had, and steps were taken through which the purchase by the New York Indians from the Menomonees and Winnebagoes was so reduced as to include only 500,000 acres of land on the south and west of the Fox river, together with three townships on the north and east of said river, comprising 89,120 acres, which was to be set apart for the Stockbridge, Munsee, and Brothertown tribes, to all of which the New York Indians duly assented, and thereafter the title to the said three townships and the said 500,000 acres was recognized by the Congress and the President of the United States to be in the New York Indians. In the treaty of February 8, 1831, with the Menomonee Indians it was agreed that certain land in Wisconsin

might be set apart as a home to the several tribes " of New York Indians who may remove to and settle upon the same within three years from the date of this agreement."

This treaty was assented to by the New York Indians, October 17, 1832, and by amendment later introduced by agreement between the United States and the Menomonee Indians, the removal of those of the New York Indians who might not be settled on the lands at the end of three years was left discretionary with the President of the United States. A small portion of the New York Indians removed to the Wisconsin or Green Bay lands.

In the treaty with the Menomonees, *supra*, appears at the end of article 1 the following:

" It is distinctly understood that the lands hereby ceded to the United States for the New York Indians are to be held by those tribes under such tenure as the Menomonee Indians now hold their lands, subject to such regulations and alteration of tenure as Congress and the President of the United States shall from time to time think proper to adopt."

V.

The title of the New York Indians as set forth in the fourth finding has since been acknowledged by the United States; as in the treaty with the Menomonees of September 3, 1836; in the treaty with the Stockbridges and Munsees, of September 3, 1839; in the treaty with the New York Indians concluded at Buffalo Creek January 15, 1838; and in the treaty with the Tonawanda band of Senecas of November 5, 1857.

VI.

From the preceding findings it appears as a fact that prior to February, 1831, the claimants, with the approbation of the President, had purchased from the Menomonee and Winnebago Indians certain lands near Green Bay, in the then Territory of Wisconsin; that a question had arisen as to the extent of this purchase, which was finally settled by treaty between the Menomonees and the United States in February, 1831 (ratified in 1832), which treaty contained a provision securing to claimants, in consideration of $20,000, 500,000 acres of land at Green Bay (in addition to the townships set apart for the Stockbridge, Munsee, and Brothertown tribes), on condition that they should remove to the same within three years or such reasonable time as the President of the United States should prescribe.

VII.

In January, 1838, the claimants had not all removed to the lands in Wisconsin, but had been prevented from doing so by reasons accepted as sufficient by the President of the United States.

VIII.

Prior to the month of January, 1838, the claimants applied to the President of the United States to take their Green Bay lands and provide them a new home in the Indian Territory. Pursuing the Government policy in removing the Indians to the west of the Mississippi, the President acted upon the application of the Indians by making with them the treaty (known as the treaty of Buffalo Creek) of January 15, 1838.

IX.

The treaty of Buffalo Creek provided, in consideration of the premises recited in the foregoing three findings and of the covenants contained in the treaty itself to be performed by the United States, that the claimants cede and relinquish to the United States all their right, title, and interest in and to their Green Bay lands (excepting a small reservation), and in consideration of this cession and relinquishment the United States, in and by the treaty, agree and guarantee as follows:

First, to set apart as a permanent home for all of the claimants *having no permanent homes* a certain tract of country west of the Mississippi river, described by metes and bounds and to include 1,824,000 acres of land; to have and to hold the same in fee-simple to the said tribes or nations of Indians by patent from the President of the United States, in conformity to the provisions of section 3 of the act of Congress of May 28, 1830, entitled "An act to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi;" the same to be divided among the different tribes, nations, or bands in severalty; it being understood that the said country was intended as a future home for the following tribes: The Senecas, Onondagas, Cayugas, Tuscaroras, Oneidas, St. Regis, Stockbridges, Munsees, and Brothertowns, and was to be divided equally among them according to the number of individuals in each tribe, as set forth in a schedule annexed to the treaty and designated as Schedule A, on condition that such of the claimants as should not accept and agree to remove to the country set apart for them within five years, or such other time as the President might from time to time appoint, should forfeit to the United States all interest in the lands so set apart. The following is the Schedule A:

Census of the New York Indians as Taken in 1837.

Number residing on the Seneca reservations:

Senecas	2,309
Onondagas	194
Cayugas	130
	2,633

Onondagas, at Onondaga	300
Tuscaroras	273
St. Regis in New York	350
Oneidas at Green Bay	600
Oneidas in New York	620
Stockbridges	217
Munsees	132
Brothertowns	360

Second. The United States agreed to protect and defend the claimants in the peaceable possession and enjoyment of their new homes, and to secure their right to establish their own government, subject to the legislation of Congress respecting trade and intercourse with the Indians.

Third. The United States agreed that the lands secured to the claimants by the treaty should never be included in any State or Territory of the Union.

Fourth. The United States agreed to pay to the several tribes and nations of the claimants hereinafter mentioned, on their removal west, the following sums, respectively, namely: To the St. Regis tribe, $5,000; to the Seneca nation, the income, annually, of $100,000 (being part of the money due said nation for lands sold by them in New York, and which sum they authorized to be paid to the United States); to the Cayugas, $2,500 cash and the annual income of $2,500; to the Onondagas, $2,000 cash and the annual income of $2,500; to the Oneidas, $6,000 cash and to the Tuscaroras, $3,000.

Fifth. The United States agreed to appropriate the sum of $400,000, to be applied from time to time by the President of the United States for the following purposes, namely: To aid the claimants in removing to their new homes and supporting themselves the first year after their removal; to encourage and assist them in being taught to cultivate their lands; to aid them in erecting mills and other necessary houses; to aid them in purchasing domestic animals and farming utensils, and in acquiring a knowledge of the mechanic arts. It does not appear that application was made by the tribes or bands or any of them to the Government for removal to the Kansas lands, except as appears in finding XV below. Article 3 of this treaty of Buffalo Creek provides that such of the tribes of the New York Indians as did not accept and agree to remove to the country set apart for their new homes within five years, or such other time as the President might appoint, should forfeit to the United States all interest in the lands so set apart. By supplemental article the St. Regis Indians assented to the treaty with this stipulation, viz:

And it is further agreed that any of the St. Regis Indians who wish to do so shall be at liberty to remove to the "said country at any time hereafter within the time specified in this treaty, but the Government shall not compel them to remove."

The treaty of January 15, 1838, as amended by the Senate June 11, 1838, was assented to September 28, 1838, by the Seneca tribe of New York Indians; August 9, 1838, by chiefs of the Oneida tribe; August 14, 1838, by the Tuscarora nation residing in New York; August 30, 1838, by Cayuga Indians residing in New York; October 9, 1838, by the St. Regis Indians residing in New York; August 31, 1838, by the Onondaga tribe of Indians on the Seneca reservations in the State of New York.

There is no evidence before the court that the Onondagas at Onondaga (300), Oneidas at Green Bay (600), Stockbridges (217), Munsees (132), Brothertowns (360), ever assented to the treaty as amended by the Senate June 11, 1838.

X.

In the year 1838, at the time of the making of the treaty of Buffalo Creek, the Six Nations of New York Indians, designated by that name in the treaty, consisted of six separate nations or tribes known and named as the Senecas, the Onondagas, the Oneidas, the Cayugas, the Tuscaroras, and the St. Regis; and each of said nations or tribes, except the Cayugas, owned and possessed a reservation of land in the State of New York on which the members of said tribes resided and the right to occupancy to which was secured to them by treaty stipulations. The Cayuga Indians had no separate reservation of their own in the State of New York, but made their home with and resided upon the reservation and lands possessed by the Seneca nation with the consent of the latter.

XI.

The lands occupied by the Seneca nation in the State of New York, as set forth in the last preceding finding, consisted of four separate and distinct reservations, namely:

The Buffalo Creek reservation in Erie county, containing 49,920 acres; the Cattaraugus Creek reservation, containing 21,680 acres; the Allegany reservation, containing 30,469 acres, and the Tonawanda reservation, in Genesee county, containing 12,800 acres. The lands occupied by the Tuscarora Indians were situated in Niagara county, N. Y., and comprised 6,249 acres. The lands occupied by the Onondaga tribe were situated in Onondaga county, N. Y., and comprised 7,300 acres. The lands occupied by the Oneida tribe were situated in Oneida and Madison counties, N. Y., and comprised 400 acres. The reservation and lands occupied by the St. Regis tribe, were situated in Franklin county, N. Y., and comprised about 14,000 acres.

XII.

For many years prior to the making of the treaty of Buffalo Creek in 1838, the said several nations or tribes of Indians had im-

proved and cultivated their lands, on which they resided and from the products of which they chiefly sustained themselves.

XIII.

At the time of the making of the treaty of Buffalo Creek in 1838, one Thomas L. Ogden and one Joseph Fellows, both residents of the State of New York, claimed to be the assignees of the State of Massachusetts and owners of the pre-emptive right of purchase from the Seneca nation of the several reservations of land occupied by them as above set forth, which pre-emptive right had been secured to the Commonwealth of Massachusetts by a convention of the States of New York and Massachusetts, held on the 6th day of December, 1786. The claims of the said Ogden and Fellows were recognized and provided for in the said treaty of Buffalo Creek and the treaty supplementary thereto, which was entered into between the United States and the said Six Nations on the 20th day of May, 1842. After the ratification of said treaty of 1842, which was proclaimed on the 26th day of August in that year, the Seneca nation surrendered to said Ogden and Fellows the possession of the Buffalo Creek reservation aforesaid, and the said nation has since continued to occupy the Cattaraugus and Allegany reservations mentioned in said treaties of 1838 and 1842.

XIV.

The President of the United States never prescribed any time for the removal of the claimants or any of them to the lands or any of them set apart by the treaty of Buffalo Creek.

XV.

No provision of any kind was ever made for the actual removal of more than about 260 individuals of the claimant tribes as contemplated by the treaty of Buffalo Creek, and of this number only 32 ever received patents or certificates of allotment of any of the lands mentioned in the first article of the treaty, and the amount allotted to those 32 was at the rate of 320 acres each, or 10,240 acres in all.

In 1845 Abram Hogeboom represented to the Government of the United States that a number of the New York Indians, parties to the treaty of 1838, desired to remove to the Kansas lands, and upon such representation and in conformity with such desire said Hogeboom was appointed special agent of the Government to remove the said Indians to Kansas.

The sum of $9,464.08 of amount appropriated by Congress was expended in the removal of a party of New York Indians under his direction in 1846.

From Hogeboom's muster-roll in the Indian Office it appears that 271 were mustered for emigration. The roll shows that of this

number 73 did not leave New York with the party; the number, thus reduced to 191, arrived in Kansas June 15, 1846; 17 other Indians arrived subsequently; 62 died, and 17 returned to New York.

It does not appear that any of the 32 Indians to whom allotments were made settled permanently in Kansas.

XVI.

The United States, after the conclusion of the treaty of Buffalo Creek, surveyed and made part of the public domain the lands at Green Bay ceded by the claimants, and sold or otherwise disposed of and conveyed the same and received the consideration therefor.

XVII.

The lands west of the Mississippi secured to the claimants by the treaty of Buffalo Creek were, afterwards, surveyed and made part of the public domain, and were sold or otherwise disposed of by the United States, which received the entire consideration therefor; and the said lands thereafter were and now are included within the territorial limits of the State of Kansas. The price realized by the United States for such of the said lands as were sold was at the rate of $1.34 per acre, while the cost of surveying, etc., the same was at the rate of about 12 cents per acre, making the net price realized by the United States about $1.22 per acre.

XVIII.

By treaty with the Tonawanda band of the Senecas, numbering 650 individuals, the United States, November 5, 1857, in consideration of the release by the said band of its claims upon the United States to the lands west of the State of Missouri, all right and claim to be removed thither and for support and assistance after removal and all other claims against the United States under the treaties of 1838 and 1842 (reserving their rights to moneys paid or payable by Ogden and Fellows), agreed to pay and invest, and did pay and invest, for said band the sum of $256,000. This amounted in substance to compensating the beneficiaries of the treaty of 1838 at the rate of $1 per acre for their claims to lands in Kansas, under said treaty, and also their proportionate share of the $400,000 provided to be appropriated in that treaty.

XIX.

After March 21, 1859, an order of the Secretary of the Interior was made which directed that the tract of land in Kansas Territory known as the New York Indian reserve should be surveyed with a view of allotting a half section each to such of the New York Indians as had removed there under treaty provisions, after which the

residue was to become public domain. After this and before the proclamation of the President of said lands as part of the public domain (December 3 and 17, 1860) the New York Indians employed counsel to protect and prosecute their claims in the premises, asserting in the powers of attorney that the United States had seized upon the said lands contrary to the obligations of said treaty, and would not permit the said Indians to occupy the same or make any disposition thereof; the said Indians have steadily since asserted their said claims.

XX.

Of the sum of $400,000 agreed by the treaty of Buffalo Creek to be appropriated by the United States for the purposes mentioned in the ninth finding above, only the sum of $20,477.50 was so appropriated (except as hereinafter stated). Of this sum only $9,464.08 was actually expended: this sum was expended for the removal, more than five years after the ratification of the treaty, of some of the 260 individuals mentioned in the fifteenth finding above; but in addition to said sum of $9,464.08 there was paid for the Tonawanda band of Senecas $256,000, as mentioned in the eighteenth finding above.

XXI.

The records of the Indian Office do not show that the President ever prescribed any time for the removal of the New York Indians to Wisconsin under the treaties of February 8, 1831, and October 27, 1832, or that the President prescribed any time for the removal of the New York Indians from Wisconsin and New York to the Kansas lands under the treaty of Buffalo Creek (January 15, 1838), or that the Government took any steps to defend those Indians who did remove to Kansas "in the peaceable possession of their new homes."

XXII.

The account under the treaty of Buffalo Creek may thus be stated (omitting all questions of law and as to interest and without deciding that the United States are or are not responsible for any portion thereof):

Credit the tribes with—

1,824,000 acres of land in Kansas, at $1 per acre....	$1,824,000 00
Amount named in articles 9 to 14, both inclusive, of the treaty of Buffalo Creek (except the $100,000 for the Seneca nation, which has been taken into the account in other dealings between the United States and that nation respecting the claims of Ogden and Fellows).....	23,000 00
Amount named in article 15 of the treaty.....	400,000 00
	$2,247,000 00

Debit the tribes with—

Amount expended in removing the portion of the 260 individuals mentioned in finding 15	$9,464 08
10,240 acres allotted to the 32 individuals mentioned in finding 15, at $1 per acre	10,240 00
Amount invested for Tonawanda band	256,000 00
	$275,704 08
Balance	$1,971,295 92

BY THE COURT.

Filed January 11, 1892.

A true copy.

Test, this 16th day of January, A. D. 1892.

[SEAL.]

JOHN RANDOLPH,
Assistant Clerk, Court of Claims.